Asociacion Hospital del Maestro, Inc. and/or Asociacion de Maestros de Puerto Rico *and* Unidad Laboral de Enfermeras(os) y Empleados de la Salud. Cases 24–CA–5213, 24–CA–5275, 24–CA–5310, 24–CA–5426, 24–CA–6282, and 24–CA–6601

May 19, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

On August 24, 1994, Administrative Law Judge Thomas R. Wilks issued the attached decision. The Respondents filed exceptions and a supporting brief, and the General Counsel filed an answering brief. The General Counsel filed cross-exceptions and a supporting brief, and the Respondents filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions,[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Asociacion Hospital Del Maestro, Inc. and Asociacion De Maestros De Puerto Rico, Hato Rey, Puerto Rico, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The General Counsel cross-excepts to the judge's ruling not admitting into evidence G.C. Exh. 199, which is a two-page excerpt of the minutes of the board of directors' meeting of Asociacion Hospital Del Maestro, Inc. held on January 30, 1982. We have carefully examined that exhibit, which is in the rejected exhibits' file, and find that the General Counsel was not prejudiced by the judge's ruling. In addition, we make the following corrections to the judge's findings in response to the cross-exceptions of the General Counsel: (1) the Respondents' bargaining proposals did include a management-rights clause; (2) while the parties initially agreed to ''syndical leave'' for time spent in bargaining sessions by unit employees on the Union's negotiating team, it subsequently became clear that the parties had not had a meeting of the minds as to whether unit employees would be paid for ''syndical leave''; and (3) at the March 6, 1985 bargaining session, Union Negotiator Quinones did not say that the expired collective-bargaining agreement was the Union's proposal. These corrections do not affect the result in this case.

[2] The General Counsel has cross-excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 363 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. The General Counsel additionally cross-excepts to the judge's ''bitter and unfair remarks on and off the record.'' Our review of the record establishes that the judge did not engage in any conduct prejudicial to the case of the General Counsel.

In agreeing with the judge's finding that the Respondents' bargaining conduct did not violate Sec. 8(a)(5) of the Act, we have carefully reviewed the statements made at the Hospital's board of directors' meeting by President Velez on March 30, 1985, and find that those statements do not establish the General Counsel's contention that the Respondents had a plan to create a ''mock impasse.''

[3] Par. 4 of the conclusions of law section of the judge's decision is modified to reflect his finding that the Respondents unlawfully granted unilateral increases to unit employees in August 1986 and May 1992.

Efrain Rivera-Vega, Esq.,[1] *Raymond E. Morales, Esq.*,[2] *Angel A. Valencia Aponte, Esq.*,[3] and *Harold E. Hopkins Jr., Esq.*, for the General Counsel.

Godwin Aldarondo Girard, Esq.,[4] *Roberto Vega Pacheco, Esq., Luis A. Nunez Salgado, Esq.*, and *Rafael Nadal Arcelay, Esq. (Cancio, Nadal & Rivera)*, of San Juan, Puerto Rico, for Respondent Asociacion Hospital del Maestro.

Heber E. Lugo Rigal, Esq.[5] and *Zaida Prieto, Esq. (Cancio, Nadal and Rivera*), of San Juan, Puerto Rico, for Respondent Asociacion de Maestros.

Pedro Baiges Chapel, Esq.[6] and *Radames Quinones Aponte*, of Rio Piedras, Puerto Rico, for the Charging Party.

DECISION

STATEMENT OF THE CASE

Prologue

THOMAS R. WILKS, Administrative Law Judge. This litigation of 7 years' duration will chronicle the tragic ongoing disintegration of a previously relatively stable bargaining relationship of some years' prior existence and one of the most protracted prosecutions of unfair labor practices I have ever encountered. The conflict and confrontation commenced between the Unidad Laboral de Enfermeras y Empleados de la Salud (the Union), and the Asociacion Hospital del Maestro, Inc. (Respondent Hospital or simply Hospital), some of whose employees, i.e., registered nurses (RNs), had been represented by the Union under a series of bargaining agreements, on the expiration of the last 3-year agreement on March 12, 1985. The attempt to negotiate a succeeding agreement in which the Hospital sought economic concessions and in which the Union demanded increased labor costs was the genesis for a series of unfair labor practices charges and complaints that began in 1985, and continued

[1] Appeared at November 1986 hearing with Cocounsel Hopkins.
[2] Appeared at May 1987 hearings with Cocounsel Hopkins.
[3] Appeared with Cocounsel Hopkins in 1992–1993 hearings.
[4] Withdrew and was replaced by Counsel Nunez subsequent to the 1987 proceedings.
[5] Replaced by Counsel Zaida Prieto subsequent to 1987 proceedings.
[6] Deceased subsequent to 1986 proceedings.

through 1992. In late 1986, the Asociacion de Maestros de Puerto Rico, known variously as the Teachers Association of Puerto Rico (Asociacion, Association, or Respondent Association), came to be involved as an alleged joint or single employer with the Hospital and coconspirator with it in a scheme to fraudulently misrepresent, in concessionary bargaining, the nature of the Hospital's financial situation. The Respondents are alleged to have engaged in a corporate shell game whereby, according to the General Counsel, Respondents joined in a ''vampire-parasite relationship'' to undermine the Union and to economically exploit the Hospital operation to the financial detriment of bargaining unit employees for the hidden monetary aggrandizement of the Association and the benefit of its teacher-members in the form of unreasonably cheap hospitalization benefits for the teachers. The General Counsel's theory of unlawful conduct rests essentially on alleged fraud, deception, economic coverup, refusal to disclose relevant requested information to the Union, creation of an artificial impasse, and unilateral changes of employment benefits thereafter, as well as other actions calculated to erode the Union's representational status both at and away from the bargaining table.

The General Counsel also comes very close to arguing alternatively in the brief that the motivation of greed, i.e., fixed intent to exploit the nurses' economic welfare, as pitiable as it was, for the benefit of the teachers even in the context of the Hospital's and the Association's own undenied general financial attrition, constitutes bad-faith collective bargaining. The heart of the dispute and the only issue involving a monetary remedial order, and the single factor preventing settlement of this litigation, is the alleged bargaining impasse and unilateral implementation of Respondent Hospital's economic offer on May 16 or June 1, 1985. The Respondents contend that because of the Union's own improper bargaining tactics involving an adamant attempt to fragment bargaining by refusing to even discuss economics until all noneconomic contractual items were agreed on, Respondent Hospital lawfully implemented its offer of economic concessions of a wage freeze and benefits reductions urgently sought to alleviate its financial distress on May 16, 1985, shortly after having reached impasse in collective bargaining. Contrary to the General Counsel's assertions, Respondents argue that the Union not only did not ask for economic justification for those concessions, but even refused to consider economic information proffered to it. Respondents deny a joint employer or single integrated enterprise relationship and deny the relevancy of requests for information as to that relationship which occurred for the first time long after the impasse and up to 1991. Respondents argue the existence of an arm's-length relationship between two independent albeit mutually cooperative entities whereby each derived benefits from special concessions to the other. There are allegations of subsequent unilateral changes in employment conditions consisting of salary raise increases and access rules to which Respondents argue that bargaining opportunity had been provided. Respondents argue that there had never been any fraudulent scheme as alleged by the General Counsel and that, in any event, not only the Hospital operation viewed by itself, but also the operation of the Association was impoverished. There are issues as to whether other requested information had been either produced or timely produced. Finally, there is the issue of governmental laches in the prosecution of the case.

With the foregoing summarization of the issues thus explicated, the recitation of the detailed history of the pleadings thereafter will be more meaningful if done in the usual reverse order of narrative.

History of Pleadings

On August 9, 1985, the Union filed a charge against the Hospital in Case 24–CA–5213, on which the Regional Director issued a complaint on September 20, 1985, which raised the simple issue of whether the Hospital, on August 8, 1985, in violation of Section 8(a)(1) and (5) of the Act, unilaterally changed the rules of union representatives' access to it as had been established in the 3-year term collective-bargaining agreement which had expired on March 12, 1985, at the outset of negotiations for a succeeding agreement. The Hospital's timely filed answer claimed that there in fact was a denial of such access to prevent disruption in service and that such denial fully complied with conditions embodied in the expired contract.

On September 27, 1985, the Union charged in Case 24–CA–5235 that the Hospital violated Section 8(a)(1) and (5) of the Act ''in or about May 16, 1985,'' by conditioning collective bargaining on acceptance of its economic offer and by ''unilaterally implementing the Employer's last offer without having reached an impasse.'' That charge was subsequently withdrawn by approval of the Regional Director on October 29, 1985. On November 20, 1985, the Regional Director issued an order rescheduling the hearing in Case 24–CA–5213 from January 30 to February 27, 1986. On November 27, 1985, the Union filed against the Hospital an unfair labor practice charge in Case 24–CA–5275, which alleged that since on or about October 14, 1985, the Hospital violated Section 8(a)(1) and (5) of the Act by refusing to bargain in good faith with the Union by refusing to provide the Union with requested financial documents, by changing the employment conditions of the RNs, and by refusing access to union representatives.

On January 27, 1986, the Union filed another charge against the Hospital in Case 24–CA–5310 which alleged that it again denied access to union representatives on January 24 and 27, 1986, thus preventing it from performing its representational duties. A consolidated complaint issued against the Hospital on February 28, 1986, scheduling a hearing for May 5, 1986, in Cases 24–CA–5275 and 24–CA–5213.

On March 11, 1986, the Hospital filed a motion to sever cases and to extend the answer filing deadline with the chief administrative law judge which was opposed by the General Counsel in his motions of March 24, 1986.

In the meantime on March 31, 1986, the Regional Director issued an order further consolidating cases, consolidated amended complaint and notice of hearing scheduled for June 9, 1986, in Cases 24–CA–5310, 24–CA–5275, and 24–CA–5213. The amended consolidated complaint alleged in paragraphs 8 to 13 with respect to union access that the Hospital on August 8, 1985, unilaterally changed conditions of employment as set forth in the expired collective-bargaining agreement with respect to access of union representatives, by refusing access to union officers and, on October 4, unilaterally implemented changes in the aforementioned clause as announced by letter to the Union dated September 25, 1985,

and further enforced that change on October 21, 1985, by denying access to a union representative and on November 26, 1985, January 24, 1986, and January 27, 1986, by refusing union representatives access to employees' work areas in the Hospital and by otherwise restricting their access to the Hospital personnel office. It is alleged that such conduct of implementation was also inconsistent with the September 25 proposed change in rules of access and was discriminatorily applied for the purpose of undermining the Union's majority status among unit employees.

Paragraphs 14 through 16 deal with the informational issue. It is alleged that on and after November 1, 1985, the Union requested verbally and by letters dated November 8, 20, and 27, 1985, and January 8, 23, and 24, 1986, nine items of information inclusive of unit employee data, e.g., payrolls containing names, addresses, salary rates, and reports to certain agencies of duties and functions. The Union also asked for the identity of all employees involved in the ''Team nursing'' program, the work schedules for all employees in all departments at the Hospital, the number of temporary employees, including those employed by contract and/or on a per diem basis (not unit RNs), their position and what departments they were deployed, data relative to all personnel layoffs and reductions for the preceding 3 years, their job classification, and the number of such employees.

In addition to the foregoing unit and nonunit employee data, the Union is also alleged to have requested certain Hospital economic information, i.e., audited financial statements, or unaudited if not available, for the fiscal years July 1, 1984, through June 30, 1985; Hospital ''trial balances'' and/or ''preliminary unaudited financial statements'' for the fiscal year ending June 30, 1985; and, finally, requested the presentation of the Hospital's comptroller at a meeting to discuss the financial data. It is generally alleged in paragraphs 15 and 16 that relevant information necessary for the Union's performance of its ''duties and functions'' as employee bargaining agent was since November 14, 1985, either not supplied or supplied in a manner such as to constitute a dilatory bargaining tactic. The complaint is not specific as to what was or was not actually produced.

Paragraph 18 recites conduct which paragraph 19 alleges constitutes bad-faith bargaining during contract negotiations from February through December 1985. Paragraph 20 alleges that during that period of time, all of the foregoing alleged conduct of Respondent Hospital was engaged in to undermine the majority status of the Union among the unit employees. Paragraph 19 alleges as bad-faith bargaining the following specific conduct as follows in paragraph 18:

> 18. During the period described above in paragraph 17, Respondent, by its conduct and by it rigidly adhering to various bargaining proposals which were predictably unacceptable to the Union, indicated a predetermination not to reach an agreement with the Union or to enter into a binding contract with it as demonstrated by the following acts and conduct:
>
> (a) Respondent engaged in dilatory tactics by its representatives arriving late to approximately 7 of 16 scheduled bargaining sessions.
>
> (b) Respondent adamantly refused to include the existing union recognition clause in the bargaining agreement, which clause has traditionally been included in past agreements between the parties.
>
> (c) Respondent adamantly refused to include the union shop and the union dues check-off clauses in the collective bargaining agreement which clauses have been historically included in past agreements between the parties.
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> (d) Respondent has adamantly insisted on modifying the existing unit clause of the bargaining agreement by eliminating therefrom the regular part time Unit employees.
>
> (e) By insisting that supervisors, contrary to past practice and the terms of the prior agreement, be permitted to perform unit work without restriction.
>
> (f) Respondent has adamantly insisting on modifying the existing and historical clauses of the collective bargaining agreement regarding probationary and temporary employees, more particularly by insisting that the Union accede to its proposals to extend the existing probationary period of 3 months to 6 months for its Unit employees and by removing existing restrictions on the use of temporary employees to perform the work of its Unit employees.
>
> (g) Respondent has adamantly insisted that the Union accept its proposals regarding job security, which proposals entail substantial modification of the existing seniority and job security clauses, such as changing the recall from layoff rights of its Unit employees from 12 months to 6 months, eliminating other established seniority provisions regarding promotions, and superseniority for Union officials and delegates, and eliminating the established provisions relating to job security to the effect that employees be ''discharged except for just cause.''
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> (h) Respondent, on various occasions, has demanded and established as a firm and inflexible condition of finalizing any collective bargaining agreement, that the Union agree to a wage and salary freeze for all Unit employees.
>
> (i) Respondent, on various occasions, has demanded and established as a firm and inflexible condition of finalizing any collective bargaining agreement, that the Union accept Respondent's proposal calling for reductions in such benefits such as holiday pay, vacation pay, sick leave, Christmas bonus payments, paid funeral leave, overtime pay, and the existing medical plan for the Unit employees.
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> (j) Respondent has assumed a firm and inflexible position regarding its proposals to reduce the number of union delegates and to limit and restrict the union officials' participation within the grievance and arbitration procedures.
>
> (k) Since on or about February 27, 1985 and thereafter, Respondent has limited its economic counterproposals to the elimination or substantial reduction of existing contractual benefits and/or to those minimum benefits mandated by law.

Paragraph 19 alleges that all the foregoing conduct set forth from paragraphs 9 through 18 constitutes conduct calculated to undermine the Union's majority status as employee bargaining agent.

Paragraphs 21 and 22 deal with the unilateral implementation of Respondents' last offer after the alleged impasse in bargaining. Significantly, it does not comport with the date of the most recent charge concerning the issue but rather dates the conduct as occurring on or about June 1, 1985. Clearly, it encompasses the conduct alleged in the earlier timely filed but later withdrawn charge. The timing here is crucial because if the event of implementation is dated as having occurred on June 1, 1985, then the most recent charge is timely under the 10(b) 6-month limitation of the Act. If it occurred, as Respondents argue, on May 16 or 27, 1985, it would have been untimely. The consolidated complaint alleges as follows:

> 21. Since on or about June 1, 1985 and thereafter, the exact dates being presently unknown, Respondent unilaterally implemented changes in the prevailing terms and conditions of employment of the Unit employees as follows:
>
> (a) Respondent reduced the number of days of accrued vacation leave from 30 days annually to 18 days annually for those employees who work at least 120 hours per month in each month of the 12-month annual period, and has reduced the monthly accrual rate from 2 days per month to 1 day per month for those employees working at least 120 hours in said month and has modified other terms and conditions of vacation pay for the Unit employees.
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> (b) Respondent has reduced the number of paid full holidays from 11 to 9 per year and the number of paid one half day holidays from 11 to 9 per year, and further modified the terms and conditions prerequisite for the payment of said holidays.
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> (c) Respondent has reduced the number of accrued sick leave on an annual basis from 18 days to 12 days and has implemented new rules regarding the submission of medical certificates and proof of employee illness, and has eliminated the payment of unused sick leave to Unit employees.
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> (d) Respondent has reduced the entitlements as to the number of days of paid funeral leave and has eliminated funeral leave with pay for the death of an employee's father-in-law and/or mother-in-law.
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> (e) Respondent has reduced the amount of the Christmas bonus payable to qualifying employees from 5% to 2% of the annual earnings of said employee.
>
> (f) Respondent has implemented changes in the methods of computing hours worked for the purposes of the payment of overtime compensation to the Unit employees.
>
> (g) Respondent has made changes to the existing medical plan for the Unit employees.

That conduct in paragraph 21 is further alleged to have occurred without proper notice to the Union and bargaining opportunity and without impasse in negotiations. All the foregoing conduct is alleged to have constituted a refusal to bargain in good faith with the employees' statutory bargaining agent and thus violative of Section 8(a)(1) and (5) of the Act.

On April 8, the Hospital filed another motion to sever and request for extended answer filing time which was denied by the order of the associate chief administrative law judge dated April 30, 1986.

Respondent filed its answer in compliance with the terms of the aforesaid order on May 14, 1986. Many of the operational facts alleged in the complaint were admitted, but the commission of unfair labor practices was denied. Affirmatively, Respondent alleged that any changes in working conditions were made after impasse in negotiations after adequate opportunity for bargaining; that the issue is barred by Section 10(b) of the Act; that the filing of charges and complaint issuance constitute harassment and intrusion into the negotiation process; and that the Union engaged in bad-faith bargaining by insisting that negotiations for a new contract be conducted under rules determined by the Union and by refusing to negotiate mandatory subjects of bargaining until after prior agreement on nonmandatory subject matters.

On June 4, 1986, the Regional Director issued an order rescheduling the hearing to July 21, 1986, at the joint request of the parties ''to provide for the transcription and translation of extensive documents and the preparation of serious factual stipulations . . . .'' As we shall regretfully see, this was not finally accomplished until January 13, 1993, and even then not to the full extent that could have been possible given the excessive hiatus in litigation and the willingness of Respondents to do so.

On July 15, 1986, the Union and the Hospital filed a motion for continuance of the trial to a later date, inter alia, because of delay encountered in reviewing sound recording transcripts of numerous collective-bargaining negotiations and their translations. Accordingly, on July 18, 1986, the Regional Director rescheduled the trial to August 18, 1986.

Yet another unfair labor practice charge was filed by the Union against the Hospital in Case 24–CA–5426 on August 11, 1986, which alleged unfair labor practices as of April 1 and August 5, 1986, relating, inter alia, to certain unilateral actions by Respondent, a conditioning of bargaining on acceptance of the Hospital's economic proposals, to permit a ''piece-meal implementation of its [the Hospital's] economic proposals without reaching a final collective bargaining agreement.'' Yet again, the Union amended its charge on August 12, 1986, revising the language of the prior charge. Without explanation, but presumably to afford investigation of those charges, the Regional Director issued an order on August 12 rescheduling the case to August 25, 1986.

On August 18, 1986, by motion, Attorney Pedro Baiges Chapel made his appearance and because prospective union witness Pedro W. Tirado, a financial analyst, was to be absent, requested postponement to a date on or after September 15, 1986. By order of the Regional Director, the trial was postponed to September 15.

On September 9, 1985, the Acting Regional Director issued an order further consolidating cases, complaint and notice of hearing which added Case 24–CA–5426 to the litigation still scheduled for September 15. The complaint in Case 24–CA–5426 added the allegation of bad-faith bargaining since August 5, 1986, by unilaterally changing and publicizing existing wage rates without notice to or bargaining opportunity afforded to the Union. As bad-faith bargaining, it was also alleged that the Hospital refused the Union's request to negotiate such mandatory subjects of bargaining as seniority rights, union shop, dues checkoff, other salary increases, vacations, and ''various other terms and conditions

of employment.'' The new complaint alleged further refusals of requested information or alternative dilatory compliance with such requests of relevant and necessary information made in letters of June 10, August 19, and October 22, 1986 (as amended at hearing May 20, 1987), and oral requests of August 11, 1986, thus violating Section 8(a)(5) of the Act.

As night follows day, the consolidation prompted a motion for continuance by the Hospital on September 11, 1986, which, in turn, resulted in the issuance of a postponement order by the Acting Regional Director to September 22, 1986.

On September 19, 1986, the Hospital filed its answer to the newly consolidated cases which denied commission of unfair labor practices and affirmatively alleged, inter alia, that the Union had been afforded ample opportunity to negotiate any change in terms and conditions of employment, i.e., a pay raise. It further alleged union intransigence and bad faith in bargaining.

On September 19, 1986, counsel for the General Counsel served on the Hospital and the Association copies of a notice of intent to amend complaint, at trial, wherein for the first time at 3:30 p.m. on Friday before the scheduled hearing on Monday, the General Counsel implicated the Association in this litigation to join it with the Hospital as a single, integrated business enterprise and single employer or joint employers.

The underlying facts alleged in the proposed amendment are as follows:

> At all times material herein, Respondent and Respondent Asociacion de Maestros, have been affiliated business enterprises with common officers, directors, ownership, management, and supervision; have engaged in unified operations; have engaged in operations using common and interrelated advertising, insurance, financing, sales, accounting, leasing, and other related business services; have formulated and administered a common labor policy affecting employees of said operations; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single integrated enterprise.

The trial opened before me on Monday, September 22, 1986. A complex and prolonged dialogue was prompted by my attempts to elicit an understandable statement of the General Counsel's theory of the significance of the Association's involvement in the unfair labor practices, i.e., duplicity of Respondents regarding the plea of poverty in negotiations and refusal to fully disclose information relative thereto. Respondent Hospital argued that the sound recordings would reveal that the Union refused to consider any information and did not care about the financial condition of the Hospital, but rather refused absolutely to consider concessions. The General Counsel responded that it was an issue of fact to be resolved and further that he intended to produce subpoenaed documentation to demonstrate the conspiracy theory and the scheme to defraud the Union and diversion of Hospital funds to the Association and the artificial impoverishment of the Hospital. In effect, he argued the relationship between the Hospital and Association to be a contrivance to defeat the bargaining process. On being convinced of the paramount importance of such involvement, I concluded that the amendment, which I granted at trial, was so integral to the theory of prosecution and their defense that due process mandated appropriate time for the preparation of both Respondents' defense and their ability to cross-examine the General Counsel's witnesses. Counsel for the General Counsel also acquiesced in my decision to continue the litigation at a later date because they admitted that they had not as yet been able to complete stipulations agreed to by the Hospital with respect to about 900 pages of translated transcripts of sound recordings of 17 contract bargaining sessions from February 1985 through August 1986. Respondents again gave their assurances of cooperation which were accepted by the General Counsel. Counsel also admitted that the case was still being investigated as of the date of the hearing with respect to the joint-single employer issue for which he required time to prepare subpoenae in addition to those already served. I therefore adjourned the hearing to October 20, 1986.

For a variety of reasons, including the death of union counsel and an unsuccessful attempt to settle the case, the trial resumption was postponed several times. Respondents either requested or at other times joined or agreed to all postponements, including at least one by the Union, and utilized the time to request leave of the Board to appeal my approval of the complaint amendment and to stay the proceeding, which the Board denied.

At the hearing on September 22, 1986, I questioned counsel for the General Counsel at length as to just where in the pleadings one could find the conspiracy to defraud theory. The argument was that the complaint was broad enough to sustain it. The Respondent's begged not to be surprised again with a last minute announced intent to amend complaint. On November 5, 1986, the General Counsel issued another written notice of intent to further amend complaints which was received by me on November 10, 1986, and thereafter approved by my order of March 9, 1987. The amendment reads as follows:

> 1. Add as a new paragraph 11 to the existing Complaint in Cases Nos. 24–CA–5275, and 24–CA–5210 and as a new sub-paragraph 9(e) in the existing Complaint in Case No. 24–CA–5426 the following:
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> Since on or about February 27, 1985 and at various times thereafter, including without limitation, on the following dates March 12, 15, April 3, 15, 29, May 9, September 4, November 14, 1985, January 21, May 13, June 19, 24, August 5, 11, 1986. Respondents Asociacion Hospital del Maestro, Inc. and/or Asociacion de Maestros de Puerto Rico, Inc., has failed to bargain in good faith with the Union by its overall acts and conducts, including without limitation, by misrepresenting the financial condition of Respondent Asociacion Hospital del Maestro, Inc. during bargaining and/or by failing to substantiate Respondent Asociacion Hospital del Maestro, Inc.'s claim of inability to pay wage increases and to continue the existing fringe benefits to its Unit employees.

Thereafter, the General Counsel served subpoenae duces tecum on both Respondents which sought to elicit a massive amount of documentary information, inter alia, concerning

the relationship between Respondents, who in turn filed petitions to revoke.

The hearing resumed on May 18, 1987, but recessed for most of that day to permit continuation of ongoing settlement discussions which again proved futile. The next 2 days were consumed with argument. On May 5 and 6, 1986, Respondents had filed petitions to revoke subpoenae. As explained to the parties in a prehearing telephone conference call, I intended to review the prior transcript and the position of the parties and would rule on the petition on the record at the hearing. At the opening of the hearing on May 19, I denied the petition to revoke on the grounds that the subpoenae duces tecum, although extremely broad, appeared related to the issue of joint-single employer status. Respondents refused to comply with the subpoenae. Argument was then raised as to whether the Association was timely joined as a Respondent and whether what was described as the central issue of the case, i.e., impasse and implementation of the last offer in May or June 1986, is barred by Section 10(b) of the Act. Respondent moved to bifurcate the proceeding so that it could move forward with evidence on the 10(b) issue and defer litigation of the remainder of the case. Respondent was prepared to adduce evidence in the form of an April 29, 1985, written notification of implementation and the transcript of the May 9, 1985 negotiation session. The suggestion had much appeal. Counsel for the General Counsel objected and argued that the implementation did not occur until June 1, 1985, but that to arrive at such conclusions, it would be necessary not only to consider the parties' conduct in May 1985, ''but also the negotiations [and] . . . context of all negotiations,'' i.e., the Union because of all circumstances was led to believe that there had not been final notification of implementation on April 29 and May 9. Respondent argued that the 10(b) issue would resolve ''70–80% of the issues'' and that the remaining issue of access and information requested ''may be subject to a possible arrangement,'' i.e., settlement. The General Counsel however argued that the issues of surface bargaining, undermining the Union and bad-faith misrepresentation remained. Counsel for the General Counsel argued that Respondent Hospital was trying to force bargaining economic issues which it perceived as a tactic to avoid agreement because the Union:

> was not in a position to bargain over economics until it received certain information that it had requested from the Respondent and that was—had not been provided at the time [and] therefore in the context of what was going on at . . . the so-called threat to implement some of those offers . . . was not a serious threat . . . [and was] merely a show.

Respondent countered by alluding to the Union's timely filed unfair labor practice charge which had been withdrawn as evidence that it had taken the notification of a May 16 implementation seriously. At one point, I was persuaded to bifurcate the proceeding but, after an overnight recess, I reconsidered. My original thought was that if bifurcated, the balance of the case might be resolved. Respondent however had refused to settle the remaining issues and could not with any practical feasibility guarantee settlement if and when the 10(b) issue was resolved by the Board or the courts, despite its counsel's personal assurances.

Although counsel for the General Counsel represented that they would have been able to proceed with a limited amount of testimony with a few witnesses, the hearing was adjourned without date in order that the General Counsel could obtain U.S. district court enforcement of the subpoenae, and that Respondent would file with the Board on June 8, 1987, an appeal from my ruling denying dismissal of certain parts of the complaint as untimely under Section 10(b) of the Act, and my refusal to bifurcate the proceeding to litigate the 10(b) issue as well as a motion to stay proceedings. On August 10, 1987, the Board denied the motions.

No appeal was filed to the Board with respect to the denial of Respondent's petitions to revoke the General Counsel's subpoenae duces tecum. The appropriateness of my decision would have presented the Board a subsidiary issue, not fully explicated at the hearing, as to whether those subpoenae constituted an abuse of process by attempting to elicit, without Board Order, at least in some part, the very same information which the complaint alleges to have been unlawfully withheld. Subsequently, in *Electrical Energy Services*, 288 NLRB 925, 931 (1988), the Board held that there was an abuse of subpoena process where all documents sought were the very same documents that were allegedly unlawfully withheld from the requesting bargaining agent. The focus of my ruling was, however, the relatedness of the documents to the issue of joint-single employer status. In the petitions to revoke, Respondents did not explicitly raise the issue, but rather asserted, inter alia, that all information requested by the Union in bargaining, other than that of the relationship between Respondents, had been supplied and the latter information had in fact never been requested. The last assertion was contradicted by the General Counsel in his opposition motion.

With respect to the General Counsel's theory of fraudulent misrepresentation, certainly such tactics in collective bargaining are dispositive of the issue of good-faith bargaining and are therefore litigable. In *Coal Age Service Corp.*, 312 NLRB 572 (1993), a sham survey of competitors' wages and benefits was relied on in concessionary bargaining. See also *Accurate Die Casting*, 292 NLRB 284, 304 (1989), where an employer misrepresented itself as financially sound in order to prevent disclosure of its finances in collective bargaining. As I expressed at the hearing subsequently held herein however, the General Counsel appeared to be prosecuting this case on the theory of fraudulent misrepresentation with the intent of proving the falsity and fraudulent intent, i.e., that the Respondents are in fact closely interrelated and that they deceived, or tried to deceive, the Union as to this relationship and that there was in fact no impoverishment of the Hospital. Yet what the General Counsel was doing by litigation came perilously close to seeking the very information that the Union requested and was denied. The question I raised is, where does the Union's remedy lie? Is it through enforcement of its informational request so that it can make intelligent judgments as to bargaining strategy? Or is it appropriate for the Union to claim that the Respondents are lying about the Hospital's financial impoverishment and interrelationship and that the National Labor Relations Board must adjudicate that issue in an unfair labor practice proceeding? None of the parties effectively addressed that question.

After the adjournment of May 1987, months went by. Pursuant to Section 102.130 of the Board's Rules and Regula-

tions permitting ex parte requests for information as to the status of a proceeding, periodic inquiry was made by the associate administrative law judge throughout 1988 and 1989. He was told, and it was conveyed to me at one point, that the General Counsel, having obtained a U.S. district court order for enforcement of the subpoenae on August 7, 1987, would be prepared to file a motion for hearing resumption in about 6 months. Several such 6-month reports kept postponing the expected motion date to 1990.

By the fall of 1991, a 2-year silence had fallen on counsel for the General Counsel. Ex parte efforts failed to elicit an explanation as to the General Counsel's intentions. On January 7, 1992, I issued an Order to Show Cause on the General Counsel to respond in no later than 30 business days why the entire matter ought not be dismissed on grounds of ''abandonment of prosecution and/or a prejudicial delay which precludes the holding of a meaningful litigation of factual issues long ago gone stale in the memory of the witness involved.'' I also invited the other parties ''who have also remained silent'' to respond. I had assumed from their silence that they had acquiesced in the delay.

On the letter motion of the then Regional attorney on February 4, 1992, I extended the deadline to March 23, 1992, on his representation that the then remaining trial attorney, Hopkins, was ill to such an extent that his outstanding trial commitments were canceled. Respondents, meanwhile, awoke to discover that they now believed that the case should be dismissed because of the delay, and they filed appropriate motions but before they had received copies of my order extending the deadline date. I denied their motions received by me on February 20 in opposition to the extension of time but permitted rebuttal briefs to be filed by Respondents 15 working days after the receipt by them of the General Counsel's response. The Union remained silent. Subsequently, Respondent was granted an extension of time to file its rebuttal brief, once by me and once by the chief administrative law judge in my absence.

On March 20, 1992, I received the General Counsel's response. Respondent had filed with me on February 7 a response which in effect constituted a motion to dismiss because of unreasonable delay. Respondents finally filed a rebuttal brief on May 14, 1992. In the General Counsel's reply, he informed me for the first time of the status of his prosecution, of which I had been uninformed except for the above comments and other ex parte communications, that laborious analysis was being made of a massive amount of subpoenaed material.

Having reviewed the pleadings, the record, the parties' briefs, and the decision of the Board in *F.M. Transport*, 302 NLRB 241 (1991), relating to the issue of unreasonable delay by the General Counsel as well as other precedent, on May 28, 1992, I issued an order resuming hearing and denying motion to dismiss. I concluded therein that based on the state of the proceeding, it was not within my discretion to dismiss the case at that point. I noted not all May 1987 prehearing delays were attributable to the General Counsel. I further noted that the General Counsel encountered procedural resistance in its subpoenae enforcement efforts, that there was a delay in the Respondents' compliance with the court order; that it was undisputed that the General Counsel did not receive the final documents that the court had ordered for production until January 1989; that it was not until June 1990 that the General Counsel finished photocopying 95,000 pages of documents and that an enormous amount of time was necessary to examine, analyze, and translate those documents that were to be deemed relevant to the issues. (Ultimately, only a minute fraction of those 95,000 pages was actually proffered into evidence.) I further ruled in my order that the General Counsel admittedly aggravated the delay by assigning counsel on this case to other matters which, on the General Counsel's own undisclosed determination, were of more significance, and thus partially abandoned the task for which sole purpose an adjournment was granted. I however refused to condone the undisclosed decision of the General Counsel to abandon, in part, the prosecution of this case in deference to his other priorities, but I concluded that it would not serve the best interest of public policy and the interests of potential employee-victims who might be due significant amounts of backpay if the complaint was meritorious to dismiss the litigation of the case. As explicated by the Board in *F.M. Transport* supra, laches do not lie against the General Counsel for negligent delay, particularly where no prejudice had been shown.[7] Further, the General Counsel had argued that testimonial recollection would be minimally affected by the delay because of agreements to stipulate into evidence transcripts of bargaining sessions, correspondence, and other documents. Thus, at that point in the proceeding, Respondents had failed to raise a specific convincing allegation of prejudice to their ability to defend their positions. I concluded that without actual litigation, I could not determine whether or not delay had prejudicially affected the defense. I noted that in *F.M. Transport*, supra, the Board ordered the administrative law judge, who had dismissed the case on due process grounds, to litigate both the merits of the case and the due process issue in a remanded proceeding. Although my order thus invited Respondents to elicit evidence of prejudicial impact, as did subsequent invitations at trial, Respondents did not even attempt to do so.

My order of May 28 scheduled the resumption date for July 14, 1992. Respondents, however, moved on June 18 to reschedule the hearing to a date after October 15 in order to prepare for trial and to provide opportunity to appeal my order of May 28. To accommodate Respondents' request and to accommodate counsel for the General Counsel's trial commitments, national voting date and holiday dates, as well as to encourage renewed settlement efforts, I issued an order rescheduling the resumption date to November 17, 1992. Respondent filed no appeal during the hiatus but, instead, filed with me another repetitious motion to dismiss on October 14 and an opposition to counsel for the General Counsel's request to produce a certain document alleged to have been covered by the U.S. district court enforcement order.

In the response to the Order to Show Cause, the General Counsel informed me for the first time that the Union had filed new charges which resulted in the issuance of a complaint against the Hospital in Case 24–CA–6282 on March 26, 1991, almost a whole year earlier. That complaint alleged that Respondent Hospital unlawfully refused the Union's written and verbal request of November 14, 1990, February 8, 1991, and March 13, 1991, for the names, social security numbers, work programs, and shifts of per diem RNs. It also alleged an unlawful refusal to comply with a February 8,

[7] See also *Tri-County Roofing*, 311 NLRB 1368, 1384 (1993).

1991 union request for financial statements of the Associacion for the years 1988 through 1990 and auditors' recommendations for those years; a copy of the agreement whereby the Hospital provides Hospital services to members of the Asociacion and the employees of Cooperativo de los Maestros; data reflecting ''the economic contributions of each teacher associated to the health plan of Asociacion de Maestros and which is the contribution made by Asociacion de Maestros and which is the contribution made by Asociacion de Maestros should there by any (i.e., what are the rates established by the Hospital for hospitalization services and other services to the associated members of Asociacion de Maestros).''

Respondent Hospital filed its answer on April 9, 1991, wherein it denied commission of unfair labor practices. It affirmatively pleaded, inter alia, that it had informed the Union that the Union had failed to explain the relevancy of the information requested to matters pending negotiation which it asserted were at that point ''mainly economic''; that the Union bargained in bad faith; that the Union had failed to request bargaining sessions, seek negotiations, or bargain when requested; that the Union failed to make an offer during several years of negotiations and steadfastly refused to even consider an economic proposal until all benefits were restored to pre-1985 levels; that the Union's first economic offer since 1985 was on March 20, 1991, which insists on restoration of pre-1985 contractual benefits; that there had been no negotiations in 1989, 1990, up to March 1, 1991, relative to the Hospital's financial ability to pay but that to the contrary since at least February 1989, and again since April 1990, there has been an impasse solely because of the Union's repeated position ''that it would not consider or make any offers at the bargaining table with full reinstatement of all employee benefits to prior-1985 levels.''

It was not until July 31, 1992, that the General Counsel moved to consolidate Case 24–CA–6282 with these proceedings. Despite Respondents' opposition of August 18 and 25, 1992, I issued an order of consolidation on September 14, 1992.

On September 8 and October 30, 1992, the Union filed charges against the Respondents in Case 24–CA–6601, which gave rise to the issuance of a complaint by the Regional Director on October 30, 1992, wherein it is alleged that the Hospital unlawfully unilaterally implemented a ''wage increase proposal'' for bargaining unit employees without affording the Union opportunity to bargain about it on about May 15, 1992. Respondents' answers denied the commission of unfair labor practices and asserted that the parties had bargained to impasse over the proposed raise which was lawfully implemented thereafter. The General Counsel moved to consolidate Case 24–CA–6601 by motion dated November 16, 1993.

At the resumed hearing on November 17, 1992, I rejected all efforts by the General Counsel by means of motion to produce or new subpoena to obtain documents that I concluded were subject to the U.S. district court order. I ruled that the General Counsel had had ample opportunity to seek redress from the court for any failure of compliance with its order and that any such tardy effort disguised as a new subpoena was not within my jurisdiction and, in any event, untimely. Despite counsel for the General Counsel's representation to me in the response to my Order to Show Cause that he was now ready to proceed, the last minute effort to obtain further subpoena compliance with the district court order at the resumed hearing in November 1992 raised questions whether the General Counsel had not been ready to proceed as claimed in his response dated March 19, 1992, and as asserted in May 1987.

At the resumed hearing, although I denied Respondent's October 14 motion to dismiss, I instructed Respondent that I would entertain any evidence of prejudice due to delay of prosecution and would reconsider that motion. No such evidence was ever proffered. I ruled that I was compelled to proceed with litigation because of the possible adverse impact on alleged employee-victims and the alleged ''massive scheme by the Respondents to undermine and emasculate the power of the collective bargaining agent.''

The Respondents at the outset of the resumed hearing renewed the motion to bifurcate the proceeding, i.e., to litigate the impasse issue which is the issue that solely involves any employee monetary damage, i.e., backpay, and to dismiss all subsequent allegations, including information request issues, as stale. The complaint itself alleges no pre-May 1985 denial of information requests. Rather, in Case 24–CA–5275, October 14, 1985, is alleged the first unlawful denial of information.

Counsel for the General Counsel stated on the record in response that the economic information ''interest'' by the Union existed at the very early negotiation meetings prior to impasse and that the Union had then asked for economic information and was either ''flatly denied or incomplete,'' all in early negotiations and prior to the declaration of impasse. Counsel for the General Counsel further represented that prior to declared impasse in May 1985, the union bargaining spokesman Quinones stated in bargaining that ''we have not bargained over economics. I've got to have my financial expert in here to examine the documents and examine the financial situation of the hospital.''

Counsel for the General Counsel argued that in the March through April 1985 negotiations, the Union knew that the Hospital intended to allege poverty and knew that it intended to offer to the Union certain economic information which it knew it had to investigate, and that the unlawful implementation of Respondent Hospital's economic offer in May or June 1985 occurred without the Union having had such information, despite the fact that the Union had stated a purpose to hire an expert to study the economic information proffered by the Hospital as well as other information it sought to be produced. Counsel for the General Counsel strenuously argued that the transcripts of sound recordings would fully support their arguments (see pp. 43 to 63 of November 17, 1992 transcript).

Respondents' counsel argued that the transcripts of negotiations would reveal that the Union not only was not interested in economic information proffered to it but that it refused even to discuss it.

Having denied the motion to dismiss, the General Counsel was ordered to proceed. The motion to consolidate Case 24–CA–6601 was also granted, thus at least providing some currency to these proceedings, i.e., the ongoing issue of single/joint employer status and the refusal to provide information relating, inter alia, to the relationship between Respondents. Instead of immediately proceeding with testimonial evidence which their predecessor counsel had claimed

he was able to do prior to the subpoenae enforcement adjournment, counsel for the General Counsel now insisted that they could only proceed first with documentary evidence. In excess of 120 unmarked exhibits were then thrust on the court reporter for marking and which consumed litigation time. Counsel for Respondent protested that the General Counsel provided them with a 4-foot high stack of proposed exhibits at 4:15 p.m. Friday prior to the hearing, which included the transcriptions of the much discussed sound recordings.

Clearly, the counsel for the General Counsel were not prepared to proceed. They had not done, during this excessive hiatus, what they said could be done in 1987 given the undisputed proffered cooperation of Respondents' counsel, i.e., stipulations as to these exhibits. They had not even shown them to Respondents until the eve of the trial. Counsel for the General Counsel merely gave the excuse that they took no action on their prior promise to seek out stipulations as to accuracy and authenticity of the proffered exhibits because of the issuance of my Order to Show Cause. They had no explanation for their inaction between the date of my May 28 ruling and the Friday before the November 17 hearing. Though strongly tempted to dismiss the case in the face of such seemingly contemptuous behavior, because of the possibility of harm to possible employee victims, I pressed onward even after I admonished Respondents' counsel for suggesting a 1-day recess to honor a Puerto Rican holiday.

The counsel for the General Counsel attempted futilely and laboriously to authenticate by a witness the authenticity and accuracy of literally hundreds of pages of documents. After an overnight recess, it quickly became apparent that proceeding in such a tedious, time-consuming fashion was ridiculously wasteful of litigation time given counsel for Respondents' standing offer to review and stipulate to authenticity and accuracy of multitudinous documentary evidence given an opportunity to do so.

In the interests of a sane, orderly proceeding, I was therefore confronted with another necessary delay. On the suggestion of Respondent and concurrence of counsel for the General Counsel, I again adjourned the hearing on November 18 to January 26, 1993. With the consent and stipulation of the parties however, I ordered them to meet on November 20, December 9, 10, 11, 14 through 18, 1992, and January 13, 14 and 15, 1993, to do what was supposed to have been done in 1986, 1987 and thereafter, i.e., to review and stipulate on the authenticity and accuracy of sound recording transcripts, correspondence and other documents and, further, that each side would exchange all proposed exhibits to thus avoid further surprise and delay, so that the litigation of the case could be concluded as predicted to me by the parties in two weekly sessions.

A short time prior to the resumption of the hearing, I was advised in a joint telephone conference with Respondents and the General Counsel of some minor remaining problems for which a slight extension of time was needed. I was also advised informally of a renewed interest in potential settlement. To accommodate both aspects, I issued an order dated January 21, 1993, rescheduling the hearing to February 9, 1993.

On February 5, 1993, the Hospital initiated a telephone conference which was held by me and participated in by counsel for Respondent Hospital, counsel for the General Counsel, and Union Representative Radames Quinones Aponte. I was advised that the Hospital and the Union had resumed negotiations aimed at settlement of these cases involving a compromise backpay award as well as a collective-bargaining agreement in one package. Both Hospital counsel and Quinones strongly insisted that these negotiations would be impeded by simultaneous litigation. Accordingly, the Union and the General Counsel acquiesced in Respondent Hospital's request for a 1-month postponement. On February 8, 1933, I issued an order which postponed the hearing to March 16, 1993, and which instructed the counsel for the General Counsel to report to me individually or jointly with Respondent as to the progress of settlement negotiations.

On March 1, 1993, a third telephone conference was held by me with both counsels for Respondents, counsel for the General Counsel, and Union Representative Quinones. All agreed that significant progress was being made toward settlement, and they corroborated individual reports to me by the counsel for the General Counsel. All insisted that a resumption of litigation would impede settlement efforts. All agreed that both the Hospital and Union were negotiating in evident good faith. Quinones explicitly assured me that the Hospital's bargaining attitude satisfied him as to its good faith. Accordingly, by order dated March 2, 1993, the hearing resumption was rescheduled to May 11, 1993, and another joint telephone conference set for April 20, 1993, to review settlement and contract negotiation progress. During that April 20 conference with all parties, I was advised that settlement and contract negotiations had collapsed. Quinones now accused the Hospital of bargaining in bad faith despite his prior assurances to me of his satisfaction with the Hospital's bargaining attitude. Trial estimates were given by all parties of a total of two weekly sessions of 4 days each, to be equally divided between the General Counsel and Respondents because of the success in reaching stipulations as to sound recording transcripts, correspondence, and multitudinous other documents as to accuracy, authenticity, and receipt of correspondence, etc.[8]

The hearing resumed on May 11 and continued through May 12, 13, and 14. At the end of that week, the General Counsel was far from concluding his case. In clear violation of the outstanding consent order regarding the pretrial exchange of exhibits, counsel for the General Counsel augmented their previously disclosed exhibits with multitudinous additional unmarked exhibits, all of which they had not tendered to Respondents' counsel until the eve of the trial, thus giving rise to objections, complaints, and argumentation. The General Counsel justifies his conduct with the specious explanation that the newly proffered documents had been included among the 95,000 pages of exhibits obtained from Respondent in 1986 and therefore Respondents' counsel had sufficient notice and ought to be prepared to either admit authenticity or question intelligently in voir dire. Much time again was wasted by marking newly produced exhibits and inspection of same by Respondents' counsel during what should have been litigation time. The General Counsel's projection of litigation time expanded to the extent that he con-

[8] English language translations were not supplied for numerous exhibits, including the negotiation transcripts, the latter of which were not available to me in Arlington, Virginia, until long after the trial closed.

tinued through what had been the agreed-on weekly session for Respondents' case, i.e., Tuesday after Memorial day, June 1 through Friday, June 4, 1993. The June 1 resumption date was selected in large part because of counsel for the General Counsel's trial assignments which precluded any trial dates earlier than July. At the close of business on Friday, June 4, counsels for the General Counsel revealed that one of them was scheduled to depart Puerto Rico on June 5 for an assignment to Washington, D.C., through July 10 and otherwise not available until July 13 and the other co-counsel was unavailable because of military and other leave through June 24. Respondents were available for the week of June 21, but their outstanding committed trial schedules also necessitated adjournment to Tuesday, July 13, 1993. Respondents' counsel did not object to the accommodation of counsel for the General Counsel's official and personal needs. The General Counsel assured me that his case was not ''growing, '' i.e., being investigated as we proceeded, but, despite his assurances earlier on June 1 that he would finish in 1/2 or 1 more day, he now, at the end of the second week, still had not rested. Respondents assured me that they would be ready to proceed with the defense at the next session.

Resumption of the trial was thereafter postponed at the request of Respondent Hospital's counsel because of a family medical crisis that required his immediate presence in Florida. His request was supported by medical certification and was not objected to by the Regional attorney for Region 24, whom I consulted in counsel for the General Counsel's absence.

On July 15, after return to Puerto Rico of all absent counsel, I held yet another telephone conference with all counsel and representatives to discuss a new resumption date. Counsel for the General Counsel, now having satisfied their own needs, suddenly expressed an urgency to resume immediately. Because of my own trial commitments and Federal court commitments of Respondent Associacion counsel however, I ordered the hearing to be resumed on Monday, August 23 through 27, and Monday, September 13 through 17, 1993.

The trial resumed on August 23 and continued through August 24, 25, 26, and 27. By order dated August 19, 1993, I had denied Respondents' renewed motion to bifurcate and to partially dismiss the cases which had been filed 1-1/2 working days before the resumption. Without having been presented in Arlington, Virginia, with translations of those transcripts of bargaining sessions, no conclusions could be reached on the factual assertions there. The General Counsel had not rested and did not rest his case until the end of business on August 23, subject to leave to submit English language translations of the General Counsel's exhibits and joint exhibits before the close of the hearing.

The trial resumed, pursuant to the agreed-on schedule on Monday, September 13, and finally concluded with the last hearing date on September 15, 1993. It should be noted that Respondent Hospital's counsel emulated the General Counsel by proffering exhibits beyond those mutually exchanged during the winter recess. Counsel for the General Counsel unabashedly objected to the ''breach'' of my order, forgetful, of course, of their own behavior.

Even throughout the last days of hearing, concurrent efforts at settlement and contract negotiation were encouraged and were actually attempted by the parties, but without apparent success. A deadline date for submission of briefs was set for November 1, 1993, in order to allow the parties to meet and agree on the accuracy of proposed English translations of exhibits (some of which were rendered and some not) and to submit those translated exhibits to the reporter prior to filing of briefs, or to file appropriate pre-November 1, 1993 motions failing such agreement rather than keep the hearing open. As it turned out, counsel were unable to complete their tasks and they obtained extensions of time from the chief administrative law judge during my absence.

On November 18, 1993, I issued an order pursuant to the stipulation of the parties of November 16, 1993, whereby all exhibits adduced into evidence were returned from the Division of Judges to the court reporter who, in turn, arranged to meet with the parties jointly to make necessary corrections to the English language translations of exhibits. Those exhibits were not returned to me until after January 28, 1994.

The chief administrative law judge granted a series of extensions of time for submission of briefs, one of which was necessitated by the late withdrawal and substitution of Respondent Hospital's attorney. The briefs were finally received by me on March 8, 1994.

On the entire record in this case, including my evaluation of documentary evidence (which, alone, approximates or exceeds in page number the nearly 3000-page transcript), evaluation of witnesses' testimony and their demeanor where necessary, and consideration of the posttrial briefs which, although extensive, were thankfully kept to at least a manageable length, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Respondent Hospital (Hospital), a corporation duly organized under and existing by virtue of the laws of the Commonwealth of Puerto Rico, has maintained its principal office and place of business at Domenech Street, Hato Rey, in the city of San Juan and Commonwealth of Puerto Rico, where it is, and has been at all times material, continuously engaged as a health care institution in the operation of a hospital, providing hospital, medical, and related health care services.

During an appropriate period of time which is representative of its annual operations generally, Respondent Hospital, in the course and conduct of its Hospital operations, derived gross revenues therefrom in excess of $250,000 and, during the same period of time, purchased and caused to be shipped and delivered to its place of business directly from points and places located outside the Commonwealth of Puerto Rico materials and supplies valued in excess of $50,000.

It is admitted, and I find, that Respondent Hospital is, and has been at all times material, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act.

Asociacion de Maestros de Puerto Rico (Respondent Association) is, and has been at all times material, a corporation duly organized under and existing by virtue of the laws of the Commonwealth of Puerto Rico where it has maintained its principal office and place of business at 542 Ponce de Leon Avenue, Hato Rey, Puerto Rico.

At all times material, Respondent Association is, and has been engaged in the operation of a professional association of public and private teachers to provide a variety of service to its members, including without limitation, legal representation, educational, travel, insurance, emergency aid, health care, and related medical services and other professional services. During an approximate period of time which is representative of its annual operations generally, Respondent Association, in the course and conduct of its operations as a professional association, derived gross revenues therefrom in excess of $1 million and, during the same period of time, purchased and caused to be shipped and delivered to its place of business directly from points and places located outside the Commonwealth of Puerto Rico, materials and supplies valued in excess of $50,000.

I find that Respondent Asociacion de Maestros, individually, is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

I find, and it is admitted, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Issues Summarized*

The issues in this case are evident from the foregoing exposition of the history of pleadings. They however are briefly recapitulated as framed by the General Counsel's theory as set forth in the brief, paraphrased as follows:

1. Whether Respondent implemented the economic part of its offer of a succeeding collective-bargaining agreement on June 1, 1985, without having reached a bona fide impasse, without adequate notice to the Union and without having afforded the Union an opportunity to bargain, or on May 16, 1985, thus rendering untimely the most significant unfair labor practice charge.

2. Whether Respondent's concessionary bargaining proposals were motivated by legitimate business reasons or an intention to avoid contractual agreement, and to erode the Union's representational status.

3. Whether Respondent supplied the necessary information for its concessionary proposals prior to the unlawful implementation of May 16 or June 1, 1985, as requested by the Union.

4. Whether Respondent bargained in bad faith with the Union during 1985, by, inter alia, bargaining with a fixed intent to avoid agreement, and by conduct calculated to abort agreement and undermine the Union's majority status.

5. Whether Respondent unlawfully unilaterally changed the terms and conditions of employment of its employees concerning access provisions to allow union officers at the Hospital on August 8 and September 25, 1985.

6. Whether Respondent implemented unlawful changes in the access provisions of the expired contract on October 4, October 24, November 26, 1985, and January 24 and 26, 1986.

7. Whether Respondent furnished the Union the information requested orally and in writing on November 1, 8, 20, and 27, 1985; January 8, 23, and 24, June 10, August 11 and 29, and October 22, 1986; November 14, 1990; and February 8 and March 13, 1991.

8. Whether Respondent unlawfully, without having reached a valid impasse and without having afforded the Union an opportunity to bargain, implemented changes in the bargaining unit employees' terms and conditions of employment on August 1, 1986, and May 15, 1992, by granting pay increases.

9. Whether Respondent Asociacion Hospital del Maestro, Inc., and Asociacion de Maestros de Puerto Rico, Inc., are a single employer and/or joint employers within the meaning of the Act.

10. Whether Respondent Association and Respondent Hospital bargained in bad faith with the Union by misrepresenting the financial condition of Respondent Hospital or both Respondents, and by failing to substantiate their claims of inability to meet the Union's demands as demanded by the Union.

Finally, the question ought to be asked as to whether any or all of the complaint allegations ought to be either dismissed, or at least unworthy of a remedial order even if meritorious, because of staleness and the remoteness to any current impact on the free flow of commerce if it is determined that no employees suffered any unlawful monetary losses.

B. *Background*

1. The Hospital operation and its corporate, functional, financial, labor, or other relationship with the association

a. *Alleged Association control of the Hospital operation and financial relation and financial status*

The Association, which commenced existence in 1911, is a nonprofit professional association, the membership of which is constituted by 2800 duespaying, publicly and privately employed teachers throughout Puerto Rico, including those at the university level. Its gross annual income exceeds $30 million, of which $715,000 annually is forwarded to the National Education Association in the Continental United States. The objective of the Association is the promotion and defense of the welfare of its members' interests with respect to their relationship with their public and private employers and the community as a whole, including, inter alia, the quality of education provided by the Government of Puerto Rico to the community: It also provides a variety of services for its members, inclusive of which are those of legal assistance and medical care, the latter of which is effectuated at a variety of hospitals and medical centers throughout Puerto Rico and one of which is the Respondent Hospital, which the Association publicly referred to as ''our hospital.'' As stated in Respondents' joint brief, ''the Hospital began in the year 1955 and was the creature of the [Association] who dreamt it, searched for and obtained the financing, two thirds of which came from the federal government who kept abreast of its progress.'' The Association has its own separate articles of incorporation, bylaws, rules and corporate structure of executive officers, and board of directors; and Executive Committeeman Jose Eligio Velez Torres, who serves as the Association's president. Eugenio Del Valle is the vice president, and Nancy Bosch Lugo is the executive director as well as board secretary. Their authority arises from the members

through a general assembly of delegates chosen by local boards. In between periodic annual meetings of the general assembly, the board of directors governs. Its members are chosen indirectly by the delegates through the governing board selected by the delegates. The governing board selects members for the board of directors from a panel of candidates chosen by the president, who also appoints the Association's executive director. Other officers are appointed by the board of directors on the recommendations of the executive director.

At a variety of locations, the Association board of directors holds trimonthly meetings which are presided over by Velez except for his occasional absence. An executive committee meets more frequently to resolve more urgent matters or as needed. It is composed of Velez, Bosch, Del Valle, and some other board members.

The Hospital was incorporated in 1955, and its multilevel facility of about now 300 beds opened in 1958 or 1959 and is located at a separate but relatively short driving distance from the building which houses the Association's headquarters. The Hospital's board of directors is composed of 23 members, 15 of whom are members of the assembly of the Association and 6 of whom are prominent members of the community chosen by the Association board. They all serve a 3-year term. The necessary quorum requires half of the board members.

According to the articles of incorporation, the ''Hospital Association'' is a distinct entity from the board of directors which generally supervises the ongoing operations of the Hospital. The Hospital Association meets infrequently. It meets annually in an assembly to appoint to the board of directors two prominent citizens and five members from its own assembly. Membership in the Hospital Association itself is limited to the Association (i.e., Teachers Association) board of directors' members, one of the six outstanding citizens chosen as Hospital board of directors' members, or the president of the medical and dental staff of the Hospital. The Hospital Association members meet annually or in extraordinary assemblies called by the president or by two-thirds of the board of directors. A majority of the Hospital directors are also directors of the Association, according to the reference to third-party transactions in independent audits of both Respondents. There is no rebuttal evidence to the contrary.

Velez and Del Valle hold equivalent positions in the Hospital corporate structure. Bosch, by virtue of the Hospital bylaws, is also its board secretary (a.k.a. executive secretary). Del Valle testified that the duty of the Hospital board is that of a trust duty whereby it is responsible for the Hospital operation to which it gives general direction by general mandates to the Hospital administration. That tripartite administration is divided into three committees—(1) health services, (2) finance and planning, and (3) general support services—all of which are headed by administrators employed by the Hospital and who, together, run its day-to-day operations. These three administrators are chosen by the Hospital board from a panel of candidates chosen by the president, i.e., Velez. They have no responsibility with nor duties on behalf of the Association.

The finance and planning committee consists of eight members, including the president and vice president, i.e., Velez and Del Valle; executive secretary, i.e., Bosch; medical director and president of the dental and medical faculty. It meets 20 times a year and is responsible for Hospital budget preparation and all financial decisions, and it closely scrutinizes all Hospital planning and development.

Of the three operating committees, it appears thus that only the finance and planning committee has any overlapping Association executive personnel.

Since both entities are nonprofit corporations, there is no common ownership as such. The General Counsel points out the undisputed facts that the Hospital was conceived, planned, financed (along with Federal funding), and constructed by the Association to provide hospitalization benefits to its members. By virtue of their internal rules and bylaws, the Association as codebtor guarantees the Hospital's loans and budgets and has, through all years material here, assumed responsibility for the Hospital's yearly deficits. Both however maintain separate bank accounts and accounting systems. All Hospital property reverts to the Association in the event of its corporate dissolution. In nominating Bosch to the position of Association director, Velez announced:

> Bosch not only would be in charge of managing the $25,000,000 of the Teacher's Association but would also assist in managing the $30,000,000 for the Teacher's Hospital, and will be the President's adviser and associate concerning the $8,000,000,000 of the Teacher's Retirement Board's funds.

The Association employs a health service program director appointed by its board on nomination by its president, Velez. He coordinates all heath service activities, including that of negotiating and executing contracts with various hospitals in Puerto Rico. The Association acts as a health care insurer to its members and contracts with the Hospital for hospitalization health care for its members, i.e., the teachers. The Hospital also contracts for the provision of similar health care to other insurers. About 29 percent of the Hospital's health care business is derived from contracts with the Hospital, about a third from Medicare, about another third from another single, large, prepaid health insurance, known as Triple S, and the balance from many smaller insurers. From 1982 to 1992, the Association has negotiated increases in health care costs with all hospitals and clinics with which it contracts, including Respondent Hospital. About 60 percent of the Association members' hospitalization health care was provided to them by the Hospital.

Unlike the other health care insurers which contract with the Hospital, only the Association pays to the Hospital a cash advance of $200,000 every 2 weeks to be credited against actual costs debited to the Association for care tendered to Association members during the preceding month, for which the Association is billed monthly by invoice for each patient. The charges cover such items as the usual per diem rates for room and board as well as services such as laboratory analysis, drugs, X-rays, dietary service, etc. The advance payments by the Association provide it with a steady, reliable cash flow, and its patronage assures the Hospital of a large reliable source of its income.

The Association reaps very significant benefits from its relationship with the Hospital. The Association maintains its own out-patient clinic in the Hospital facility which occupies about half the area of the first floor. The only rents charged

to the Association for this clinic space were monthly fees which cover the costs of utilities proportioned to the square footage occupied by the clinic. These fees were negotiated periodically and were not referred to as a ''rent'' in the independent auditor's report until 1990, where it was reported to be $180,000 per annum and which rose to $319,000 in 1992. The clinic is staffed by employees of the Hospital Association who are augmented by an unspecified number of Hospital employees, for whose time spent in the clinic, one-half was reimbursed by the Association. There is undisputed evidence that despite the lack of a fixed chargeable rent for the clinic before 1990, the presence of the clinic benefited the Hospital financially. Because of the traffic of 600 patients daily in and out of the clinic, its proximity created patronage for the Hospital's pharmacy, laboratory, X-ray, EKG, and physical rehabilitation facilities. The drugstore alone ultimately earned a $359,000 annual total profit.

A far more significant advantage enjoyed by the Association was the discount in Hospital services provided to it. Although the Hospital discounted costs to its other large volume clients in proportion to their relative patronage, the Hospital was charged substantially less. Thus, in 1984, the daily per diem rate per patient actual cost to the Hospital was $179 whereas the Association was charged $125. Velez explained to the Association directors in his report to them at the September 11, 1985 meeting regarding the 1984–1985 fiscal year, the propriety of this advantage:

> [T]he hospital is our, it is our property and what is there is our capital; and it must produce something . . . that benefits teachers, and it is in that sense of being able to pay less per patient day where we have to play with what we pay the hospital; because we cannot strangle ourselves financially either.

At the preceding September 22, 1984 directors' meeting, at a point in time 6 months before the first collective-bargaining meeting, it was reported that although the Association's per diem charges had increased from $110 to $125 during the 1983 to 1989 fiscal years, the other largest non-Medicare health provider plan was raised to $178 from $165. Lesser health care providers paid from $179 to $190. This does not refer to intensive and coronary charges which were significantly higher than per diem rates. In 1986, the cost to the Hospital per diem per patient was $193 and the charge to the Association was only $145.

The General Counsel argues that even without calculating loss of profits, the failure to charge the Association actual costs resulted in a loss of income for fiscal year 1985 of $1,165,770, with similar losses for 1984 and 1986 fiscal years. The General Counsel, however, does not factor in the actual and potential costs to the Association of assuming the yearly Hospital deficits nor of guaranteeing its losses and long-term debts.

According to unrefuted, credible evidence submitted by reputable independent auditor witnesses, the Association expended annually over $4 million in its health services program, the chief recipient of which was the Hospital, from 1983 gradually up to over $6 million in 1991. The Hospital's fund balance as defined is its net income or loss from every type of income. From 1982, the fund balance deficit rose sharply to a high in 1986. It suffered operational losses from 1982 to 1984 when the losses rose sharply to a 1985 high. From 1986, both rose accordingly to a profit level higher in 1989 but plunged downward thereafter. In 1991, the Hospital total fund deficit rose to $857,060 and $2,667,997 in 1992. The annual Hospital debt ending June 30, 1986, was as follows:

	Excess of Operating Expenses Over Operating Revenues	*Operating Expenses Exceeding All Revenues*	*Excess of All Current Liabilities Over All Current Assets*
1983	$663,808	$111,978	$1,263,415
1984	699,457	96,245	1,359,273
1985	693,037	293,661	2,093,169
1986	758,797	223,161	387,893

Hospital loans in which the Association was a joint debtor ranged from a $4,700,000 low in 1984 to a gradually ascending high of $6,260,000 in 1991.

In 1983–1984, Medicare instituted in the continental United States a new method of benefit payments pursuant to preset diagnosis related fees rather than reimbursable actual costs. There is unrefuted testimony that for many hospitals, this proved to be financially disastrous, and its planned implementation in Puerto Rico (ultimately in October 1987) was a matter of great concern to the Hospital which was faced with declining bed occupancy, higher general costs, higher legal liability, the need to renovate, and necessary major equipment replacement costs. There is undisputed testimony that the Hospital instituted a variety of cost-cutting programs, and prepared to cope with oncoming implementation of the new Medicare reimbursement methods.

Despite his analysis of 95,000 pages of Respondents' records, the General Counsel's evidence of fraud, duplicity, and secret draining of assets and/or the secretion of Hospital profits by the Association rests on the advantage enjoyed by the Association with respect to its relationship with the Hospital as described above.

From the General Counsel's original explication of his theory, one would expect his evidence to disclose or purport to disclose a financially healthy Hospital operation except for the manipulation of its finances. It was not until the Respondents were deep into the presentation of undisputed evidence of adverse economic impact on the Hospital's operation that the General Counsel was finally prodded into conceding that the Hospital's operations had undergone economic distress. His final theory was that as described above, i.e., the Hospital would not have been impoverished had it not been for the alleged disadvantageous, non-arm's-length economic relationship with the Association and, therefore, it was not impoverished as it claimed and, moreover, was motivated by bad faith in so claiming. The evidence of those negotiating sessions will disclose, as we shall see, whether or not there was any preimpasse demand for proof of poverty of the Hospital entity, whether there was any overt misrepresentation of the Hospital's relationship with the Association or whether there was any claim at all of poverty of the Association alone or as jointly viewed with the Hospital.

The undisputed documentary and testimonial evidence adduced by Respondent Association discloses that the Association itself was not bursting with profits, hidden or otherwise.

The fund balance of the Association reflected an annual deficit from 1982 through 1992. In 1984, it plummeted to about a $6 million deficit. Similarly, it operated at a yearly loss, i.e., expenses exceeding income from 1982 to 1984 when losses were between $3 and $4 million. A membership dues' increase and increased governmental contribution turned the economic tide in 1984 to the extent that in 1985, there was a profit under $1.5 million. The fund balance deficit was reduced to somewhat less than $4 million. A step (steep) descent from annual profits however reached a break-even point in 1987. There was a slight rise thereafter in 1988, but then came another sharp descent to a million dollar loss in 1990 and thereafter. The fund balance deficit decreased to about $3 million in 1989 but also rose sharply to about $6 million in 1991. There is uncontradicted testimony that pursuant to Commonwealth law, all corporations with a yearly income in excess of $1 million must file audited financial balance sheets with the Department of State. It is not clear whether such reports filed by Respondent were accessible to the Union.

b. *Alleged Association control of the Hospital's labor relations*

There is no direct relationship between the Hospital's personnel department and the Association. The Hospital's human resource director, at the material time, Jesse Pou, was employed by the Hospital. The Hospital's decisions as to conditions of employment are determined by Hospital managerial personnel pursuant to policies determined by the Hospital's board of directors. Other than the dual roles of Velez, Del Valle, and Bosch, the Association had no other direct participation in the labor relations policy determinations nor the collective-bargaining supervision of the Hospital's board of directors who establish guidelines for the Hospital administrators. The rules and regulations that affect the daily conduct of Hospital employees were under the direct aegis of its own human resource director, Jesse Pou. The Hospital's CBA (collective-bargaining agreement) negotiation objectives, strategy, and effectuation was subject to review and approval by Velez, or the board of directors to whom the negotiators reported directly or through the administrators.

The only area of joint interface of Association and Hospital employees occurred in the Association clinic where some of the employees there were Hospital employees for whom the Hospital in part was reimbursed. The details of their duties and supervision were unclear. The only evidence of Association control is that at one time the Association needed less personnel at the clinic and canceled its contract with the Hospital for use of some of its loaned personnel. In consequence of the loss of their personnel contract, the Hospital laid off those employees no longer needed in the clinic.

2. Collective-bargaining history

The Hospital has maintained collective-bargaining relationships with several different collective-bargaining agents for separate bargaining units, one of which, as already noted in the RN unit, the Union is its bargaining agent. At one point prior to the 1987–1988 subpoenas' enforcement, the General Counsel alleged that the Respondents had engaged in a conspiracy to defraud all the other collective-bargaining agents as to the Hospital's poverty claim. This litigation, however, was limited to the RN unit contract negotiations.

The Union and the Respondent had had a collective-bargaining relationship since about 1974. This relationship has been embodied in several collective-bargaining agreements. The most recent collective-bargaining agreement expired on its own terms on March 12, 1985.

Historically, the parties have agreed to collective-bargaining agreements, including union recognition, bargaining unit, union shop, dues checkoff, shop stewards, probationary and temporary employees, access for union officials, and other terms and conditions of employment, including, inter alia, wages, vacations, paid holidays, sick leave, Christmas bonus, medical plan, hours of work, overtime pay, transfers, layoffs, recall, and grievance procedure.

In the past, according to testimony of the General Counsel's witnesses, the Union and Respondents have negotiated the collective-bargaining agreements by first negotiating the noneconomic clauses and then engaging in the negotiation of the economic clauses. When this process was completed, the union bargaining committee submitted the entire agreement to the unit membership for their ratification of the agreement, and the ratified agreement was then executed by the parties. Radames Quinones, executive director and the spokesperson for the Union during negotiations for the most recent collective-bargaining agreement signed by the parties in 1982, testified that this procedure was followed in the 1981–1982 negotiations when the parties bargained for some 6 months the noneconomic terms of the contract which expired on March 12, 1982, followed by bargaining over the economic terms and a strike of some 17 days' duration. Thereafter, an agreement was reached and signed by the parties. According to Quinones, the total bargaining process consumed about 8 months in 1981–1982.

Quinones represented that in negotiations with Respondent in 1985 that it was the hospital industry practice in Puerto Rico to negotiate the noneconomic articles first followed by the economic articles because the latter was where the major differences surfaced. Quinones testified having had experience in negotiating collective-bargaining agreements at hospitals. Thus, in 1985, the Union had negotiated 11 extant agreements at various private hospitals and letters of agreement at several public hospitals. Other than Quinones' representations to Respondent Hospital's negotiators, there is no competent evidence of actual industry practice regarding the sequence or priority of negotiated contract terms. The chief 1985 Hospital negotiators responded to Quinones that they were not employed by it as the 1982 negotiators and were not bound by the preceding practice. There were 15 succeeding contract bargaining sessions held from February 27, 1985, through and including August 11, 1986, all except the first of which was tape recorded, reduced to typed transcript, and stipulated into evidence as accurate accounts of the meetings. The meeting dates are as follows: March 6, 15, 20, 26, 1985; April 3, 15, 1985; May 9, 1985; August 26, 1985; September 4, 1985; October 18, 1985; June 24, 1986; and August 5, 11, 1986. By December 1985, the only articles or sections of articles agreed to or initialed by the parties were those regarding:

a. Layoffs
b. Licenses (syndicate and personal licenses)

c. Purposes
d. Working time
e. Meal period
f. Pension plan
g. General provisions
h. Discrimination
i. Separability

C. *Negotiations to Alleged Impasse and Implementation of the Hospital's Economic Offer, i.e., Concessions of a Salary Freeze and Fringe Benefit Reductions in May 1985*

1. Preliminaries

The Union first notified the Respondents of a desire to negotiate new terms to the expiring contract on May 8, 1984, and to negotiate a new collective-bargaining agreement (CBA).

On November 30, 1984, the Union sent the Hospital a CBA proposal which contained a variety of increased pay and fringe benefits costs proposals and engaged in telephone contracts regarding negotiations. By letter of December 12, 1984, Jesse Pou, then human resources director of the Hospital, acknowledged receipt of the proposal by a letter dated January 16, 1985. By letter of February 12, 1985, legal counsel for the Hospital responded to the proposal with an offer to start negotiations. The first bargaining meeting was held on February 27, 1985, and at that meeting, the Union was tendered the Hospital's collective-bargaining contract proposals which, according to the General Counsel, were so regressive that no self-respecting union could accept them.

The Hospital proposal, as set forth in detail in the complaint, inter alia, did not include union recognition, union shop, or a dues-checkoff article. It modified language in the bargaining unit clause by eliminating limitation on use of supervisors and nonunit RNs in unit work, modified the article of the expired CBA which dealt with probationary and temporary employees by eliminating reference to regular part-time unit employees, and extended the probationary period of the then-existing CBA from 3 to 6 months. The proposal also regressively modified seniority and job security articles and eliminated provisions limiting the employer's right to discharge except for just cause. It reduced the number of delegates' (employee-union representatives) and union officials' participation in the grievance and arbitration procedure. It also eliminated the old CBA union-recognition clause.

Most significantly, the proposal provided for a wage freeze and reduction of benefits such as holiday pay, vacation pay, sick leave, Christmas bonus, and funeral leave whereas the Union's proposal demanded substantial wage and benefit increases, including sick leave, half holidays, funeral leave, maternity leave, and Christmas bonus. It however eliminated articles contained in the existing CBA such as administration rights (i.e., management rights).

The expired CBA had set forth a 3-year progression of raises of $55, $55, and $60 per month. The Union now proposed a 3-year wage raise progression of $125, $130, and $135. The Union proposed a raise of the basic monthly salary for employees of less than 3 years' seniority from $650 to $700 per month and for higher seniority employees from $675 to $725 per month. Proportionate increases were also proposed for specialty area rates (e.g., emergency room from $25 to $45 and surgery from $30 to $50), as well as shift differential rates of pay.

2. Tardiness or refusals to meet more frequently

There is no clear, convincing evidence that the Hospital stalled the commencement of negotiations nor refused to meet more frequently. The negotiation transcripts reflect only a passing comment by Quinones that perhaps consideration ought to be given for more frequent meetings at what appeared to him at the start to be an expected protracted negotiation. It is not clear that he was serious. It is clear he did not press the point nor did he disagree with any dates proposed for the next meeting. There is evidence that Quinones canceled at the last minute a meeting scheduled for March 12, the expiration of the old CBA. Respondents complained to him bitterly about that incident in correspondence.

With respect to tardiness, the witnesses for each side contradicted witnesses of the other side as to which side was more tardy than the other. The General Counsel's witnesses are not mutually corroborative on this issue nor are they very convincing. Most damaging was the testimony of General Counsel witness Ramon Davila Cruz, then a union service agent and chief assistant to chief union negotiator Quinones. He was most unconvincing on the issue, and he failed to corroborate the more accusatory testimony of Quinones and unit employee negotiator Marguerita Cordero Fernandez. Davila testified vaguely that ''generally,'' the Hospital negotiators arrived late except that ''once or twice'' union representatives were late. Other General Counsel witnesses insisted that union negotiators were never, never tardy but rather the Hospital negotiators ''always'' were late. At counsel for the General Counsel's further insistence and leading examination, Davila agreed with counsel that ''yes,'' the Hospital agents were ''frequently late.'' But then he changed the estimate to ''several times.''

Davila's and other notes of the union employee-negotiators were adduced into or read into evidence regarding the tardiness issue. Although indicating the starting times of meetings, the notes, however, like the sound recording transcriptions, fail to establish the reason for the late start or that Respondents were the cause of it. Davila and Cordero admitted that there is only one explicit reference in their notes to the Hospital's tardiness on one date. The sound recording transcripts disclose that Quinones felt free to vociferously and forcefully explicate his accusations of Respondents' bad faith and misconduct at those meetings. Yet, there is no reference whatsoever, until very late in negotiations, where any serious complaint was made. There is no credible evidence therefore that employer tardiness adversely impacted the preimpasse negotiations.

3. Preimpasse negotiations

a. *General overview*

In view of the parties' stipulations to the accuracy of the sound recording transcripts, I defer to those recordings as more credible than inconsistent testimonial or other bargaining notes which counsels for both sides insisted on introducing into evidence over my strenuous but otherwise largely futile resistance. The parties, of course, had the opportunity to introduce any evidence of any meeting or parts of meetings

not captured on those tape recordings, and I had no idea precisely what or what was not recorded.

The Union's bargaining committee consisted of its chief spokesperson, Quinones, assisted by Davila and employee committee persons Cordero, Ramonita Cruz, Nitza Ojeda, and Nivia Pizarro. There were four other alternate employee committee persons. The Hospital committee was headed by its chief spokespersons, Attorneys Godwin Aldarondo Girard and Roberto Vega Pacheco, both of the law firm of Cancio, Nadal & Rivera. Attorneys of that law firm continue to represent both Respondents. Aldarondo commenced as chief spokesperson, assisted by Vega. After a few meetings, Vega assumed Aldarondo's responsibilities as chief spokesperson. Aldarondo departed in late 1987, and Vega did so in July 1988. Assisting the attorneys in negotiations were Jesse Pou and Maria T. Rivera, director of nursing. Sometimes meetings were conducted at the offices of Respondents' attorneys and other times at the facilities provided by the Commonwealth Labor Department, Division of Conciliation and Mediation.

The testimony most inconsistent with that of the stipulated accurate transcripts, as well as the most internally inconsistent testimony, is that of Quinones. His testimony attempted to characterize the Hospital negotiators as first having agreed at the first session to negotiate, agree upon and ''sign as agreed to'' all the noneconomic clauses of the contract before even discussing the economic issues. He testified that the Hospital complied with that agreement until April 1985, when it violated that agreement by attempting to negotiate economic issues. Quinones, who admitted that he was well aware that by the first meeting the Hospital was claiming financial distress and seeking economic concessions, testified that he tendered a second economic proposal on April 3, 1985, as a strong show of the Union's willingness to be flexible and to induce the Hospital to make concessions on its noneconomic proposals which he considered as a change in the totality of the old CBA to be outrageous and union busting. The inference intended by this testimony is that the Union futilely sought to negotiate a compromise, i.e., give and take in the form of modified economic demands in return for a backing off on the Hospital's regressive noneconomic demands. He testified that he had anticipated 7 or 8 months of negotiations to resolve the economic issues and therefore he thus attempted to resolve the noneconomic issues first but that the Hospital did not even respond in any way.

Quinones testified that despite the Hospital's assertion, no impasse occurred ''whatsoever.'' He testified that despite the Hospital's negotiators' claims of impoverishment and need for a wage freeze and reduced benefits that he took the position prior to alleged impasse that ''when the time came'' to negotiate economics, the Union would hire a financial analyst ''because we knew the [Hospital's financial condition] was a good one.'' He testified that with the aid of the hired analyst an economic agreement would have been achieved, but that it was not easy for a union to agree to a wage freeze and benefits reduction ''blindfolded.'' He accused the Respondent of seeking, in preimpasse negotiations, to get him to agree blindly to concessions and a contract which would be the ''death of the Union'' at a time when the Union needed to have the ''real'' economic facts. He testified that the Union had inadequate factual information of the Hospital's economic situation and he needed to be well informed. The implication in his testimony is that the Respondent's negotiators attempted to rush him into an acceptance of economic concessions while refusing to disclose information he sought from it.

Quinones further testified that he was well aware from unit members' reports of the relationship between the two Respondents, which he perceived is a single profitable entity. He testified ''I told them that we need counseling.'' He testified that because of the ''complexity'' of economic data at the Hospital, he would not deal with the economic issues. All this suggests that the Union attempted to obtain information regarding the Respondents' economic relationship prior to the alleged impasse. Quinones testified that the Hospital brought to the April 3 meeting for the first time its comptroller, Carlos Gonzalez Caceres (and later from August 1986 until his resignation in December 1990, the Hospital's director of finance). The comptroller's duties were to supervise accounting, payroll management, budget preparation, and all areas of finance. Quinones testified that Gonzalez took no interest in explaining ''anything'' to him or to anyone else then or much later, when the Union hired an analyst with whom Gonzalez finally met at the August 11, 1986 meeting after refusing for 8 months to meet. Quinones testified that Gonzalez was foisted on him at the April 3, 1985 meeting, because Respondent Hospital's attorneys well knew that ''I know nothing of economics.'' Thus we have the implied picture presented of the Hospital comptroller evading penetrating questions of the chief union negotiator who knew nothing of economics but who possessed sufficient information to conclude that the Hospital was not in economic distress, particularly because of its relationship with the Association, but yet who was negotiating blindly because of a refusal of disclosure of the same information by Respondents.

What little Davila testified, in generalities, as to the negotiations is shown to be unreliable in view of inconsistencies with Quinones. For example, Quinones admitted to awareness of Respondents' requested need for concessions as of February 27, 1985, and, he implied, union requests for information of the Hospital. Davila, however, testified that Gonzalez' appearance on April 3, 1985, came as a surprise to the Union which was unaware of any alleged financial difficulties of the Hospital, despite his own bargaining notes of March 20, 1985, which assert that the Hospital ''has to prove'' financial trouble. Davila admitted that the tape recording transcripts which he reviewed were accurate. He admitted that the Union itself refused to even discuss its own economic counterproposal of April 3, 1985. He admitted that the tender of that counterproposal ''did not change in any way what had been submitted,'' i.e., that noneconomic issues must be negotiated first and economic issues later. Davila could not even remember whether Respondents had asked for a union economic proposal, whereas the transcripts reveal a vigorous, persisting demand for it.

Quinones claimed in cross-examination that the Union first started the ''process'' for hiring a financial analyst sometime in May 1985 but admitted it did not actually hire one until October 1985. He further admitted that the Union could not know of the Hospital's real financial situation if it refused to discuss economics. He explained that during the May 1985 negotiations ''it was not time'' to discuss economics because ''we were in the midst of [discussing] non-economic

issues.'' He denied that in May 1985 the Union's position was that noneconomic be discussed first. Again, despite the foregoing direct examination, he now categorically denied that the Union wanted to negotiate noneconomics first. Further in cross-examination, he testified that in the March 1985 negotiations, he expressed a flexibility with respect to economic concessions although he resisted the ''manner'' in which they were proposed. He denied having taken a position that economic information was irrelevant in May 9, 1985.

Contrary to the foregoing direct examination testimony, Quinones, in cross-examination, admitted that there had been at the February 27, 1985 meeting to agree on ''rules of the game,'' no agreement as to the order of discussing economics or noneconomics. He further offered the explanation ''that was left pretty much in the air, but we started on the non-economic issues.'' He again admitted, ''No, there wasn't [an agreement] that was left up in the air, more or less.'' This is a most damaging admission. It not only affects his credibility as a witness but reflects severely on his honesty as a negotiator because the transcripts of those preimpasse meetings clearly reveal that Quinones vigorously and repeatedly accused the Hospital negotiators of a bad-faith attempt to violate such explicit agreement when the Hospital negotiators insisted on at least discussing economic issues either first or in conjunction with noneconomic negotiations. Similarly false accusations were reflected in the transcripts with respect to whether the Hospital agreed during the first meeting to pay employee members for working time spent in negotiations for which they had been excused from scheduled work. Davila himself admitted in his testimony that there was only an agreement for ''syndical leave'' for negotiation which, under the expired CBA, amounted to leave without pay for union business. The Union had demanded paid leave as had been granted in the 1982 negotiations. Quinones admitted in cross-examination that Respondent took the position with respect to paid leave or syndical leave that its position, as it was with respect to all its proposals, was ''negotiable.''

In continued cross-examination, Quinones admitted that the Union had refused to discuss salary issues, but he said ''not categorically.'' Then he admitted that ''maybe'' he did so when he was asked to discuss salary ''raises.'' Then he admitted that ''Yes,'' it is possible that the Hospital offered to negotiate both salary raises and cuts at the meeting of March 20, 1985. When asked whether at the March 20 meeting, the Union refused to discuss economic and noneconomic issues jointly at some point in negotiations, he answered: ''That was not the Union's fundamental position.'' He also admitted that at the April 3 meeting he ''claimed'' that it had been agreed to discuss noneconomics before discussing economics. When confronted with his prior inconsistent testimony, he tried to suggest that the Hospital's acquiescence for an initial period of time to discuss noneconomic clauses constituted an ''agreement.'' He admitted that Aldarondo challenged him to point out in the tape recordings of prior meetings any such agreement. He acknowledged, when confronted with the transcript of that meeting, that he asserted to the negotiators that an explicit agreement to negotiate noneconomics first had been entered into by the parties at the first meeting and that accordingly he demanded ''and that is what has to be negotiated.'' His effort to reconcile this testimony was facilely disingenuous.

Quinones admitted that the Union asserted in negotiations that it possessed its own information as to the good financial position of the Hospital and that Aldarondo challenged him to produce it. He explained that the Union never produced it because the Hospital never again insisted on it and that ''it was never mentioned again.''

Quinones testified that his first awareness, i.e., ''official'' awareness of the implementation of Respondents' economic offer, i.e., salary freeze and benefits reduction, occurred at the meeting of August 11, 1985. Then he acknowledged the filing of the September 27, 1985 unfair labor practice charge that alleged a May 16, 1985 implementation. After more evasion, when confronted with the transcript of the May 9, 1985 meeting, he admitted that Aldarondo told the Union for the second time of the implementation of Respondents' economic offer effective as of May 16.

Finally in cross-examination, Quinones equivocated as to whether the Hospital offered joint negotiations on economics and noneconomics. When asked again, he testified, ''I don't know; he may have done that.'' He also did not recall, when confronted with the transcript of the April 15, 1983 meeting indicating as much, whether Aldarondo persisted for a second time in asking for production of the Union's contrary information as to the Hospital's financial distress. Nor did he recall whether the Hospital requested joint negotiations at the May 9, 1985 meeting.

The transcripts of the tape records of those bargaining meetings appear to be fairly complete, even with short breaks in the tapes. A careful review, and indeed even a cursory review of that transcript, reveals how profoundly inaccurate was Quinones' testimony, and indeed the General Counsel's representations at trial and in large part in the brief, as to what transpired. The transcripts essentially, and very much in detail, corroborate the testimony of Aldarondo, Vega, Pou, and other Respondent witnesses as to what transpired. I find Quinones' and Davila's reliability so damaged that I credit the contrary testimony of Aldarondo and Vega, witnesses who at the trial had no interest in the proceeding.

Clearly, the Hospital confronted the Union with a claim of poverty and need to negotiate economic concessions first because of the urgency of the Hospital's real operational losses. The Union, instead, played a game of pretending an agreement to do otherwise. When continually challenged to explain its position, the Union merely stated that it was the Puerto Rican way of doing things and that the Union, i.e., Quinones, recognized and admitted in negotiations that if it were to discuss economics, it would result in an impasse. Quinones characterized, as did the General Counsel in brief, such likely impasse as ''artificial.'' It however was recognized by Quinones that with the ''artificial'' characterization or not, the parties were so far apart on economics that impending deadlock was apparent (the April 3 union counterproposal did not offer a truly significant reduction in salary demands, i.e., raises of $115 each for 3 years instead of $125, $130, $135).

The Union, i.e., Quinones, who vehemently rejected the claim that the Hospital was in any way financially distressed, said he had his own information and repeatedly refused to produce it. He similarly rejected the Hospital's tender of its financial statements. The Union, i.e., Quinones, absolutely

refused to even discuss economics either separately or jointly with noneconomics. That the Respondent had led off with what clearly were expected to be perceived as outrageous noneconomic demands was obviously a ploy to get leverage for economic concessions. When Quinones was in part literally begged to discuss economics, it was pointed out to him that although Respondent was ''firm'' in its noneconomic demands, perhaps some tradeoffs could be made, i.e., checkoff and union shop were suggested to be of some economic interest to the Union but as an administrative irritant for Respondents, it might be continued in return for some kind of economic concessions or a management-rights proviso.

Even when the Union produced the April 3 counteroffer, it refused to discuss it but, rather, persisted in seeking agreement on the noneconomic issues first before even talking about economics. Quinones made it clear in those discussions that even after noneconomic agreement, the Union would not even consider a wage freeze or a reduction of a single benefit. Despite repeated assurances that Respondents' noneconomic demands were negotiable, i.e., in the context of economic give and take, the Union demanded resolution and agreement of Respondents' noneconomic proposals which it perceived as a threat to the Union's viability as majority status bargaining agent and not as a negotiable bargaining ploy.

The transcripts also disclose that the Union made no request for proof of poverty in the form of economic data about the Hospital's operations prior to alleged impasse, nor did it request any information about the relationship between Respondents during that time. Rather, Quinones insisted that he had his own information which he would produce at a future undisclosed time after agreement of noneconomic clause, when the Union would be agreeable to negotiate salary and benefits increases, not concessions. Neither before alleged impasse nor thereafter, did he produce such data. Furthermore, the transcripts reveal that Quinones all but ignored the presence of the Hospital Comptroller and certainly did not seek any information from him.

In view of the General Counsel's contrary assertion as to the substance of negotiations, it is necessary to set forth a review of each meeting.

The essential substance of the preimpasse meetings leading up to the alleged implementation of concessions on May 16 (or June 1), 1986, is as follows, as revealed by the transcripts except for the first meeting.

b. *February 27, 1985—Meeting one*

Certain ground rules were agreed on regarding caucus procedures, tape recordings, methods of communication outside of negotiation methods, exchange of written proposals, initialing of agreed clauses at the time of agreement, setting of dates for subsequent meeting at the end of each meeting, and the release from work of employee negotiators but with unpaid syndical leave as in the expired CBA. The parties could not agree on a single working document, so they each agreed to refer to their own proposals in reference as they negotiated clause by clause.

There was discussion of ratification. The Respondent took the position that union ratification was an internal matter and that if Respondents' agreement was to be considered final and authoritative, so should be the union negotiators' agreement at the table. This issue persisted through some subsequent meetings at which time the Respondents offered alternatively that either both sides agreed tentatively, subject to ratification of union members and the Hospital board of directors, or that what was agreed to at the table was final. Ultimately, after much discussion, agreement was reached that permitted union member ratification with the promise of the union negotiator to argue for ratification by the members of what was agreed to, but that there was to be no piecemeal ratification process, i.e., failure of ratification of one article meant that the entire contract was subject to renegotiation. Aldarondo explained that the issue was raised by him because of a bargaining experience with another union where the union committee agreed to a contract but opposed ratification when it was presented to its members. Aldarondo testified that the Hospital's bargaining goals were (1) a quick CBA, (2) a wage freeze, and (3) if possible, wage benefit reductions, but most important was a wage freeze. He testified that the issue of ratification blossomed to an unnecessary degree because of Quinones' obsession with it.

c. *March 6, 1985—Meeting two*

Aldarondo apologized for being late because of the rain. Quinones vigorously expressed chagrin over the Hospital's written proposed CBA with its regressive noneconomic proposals and economic concessions. He however asked for certain bargaining unit information relating to existing benefits, e.g., medical plan rates and a list of unit members, names, dates of hire, salaries, and addresses. Aldarondo referred Quinones to the prior meeting at which he had raised the issue of ''rules of the game'' and how to start negotiations and the issue of ratification. Quinones then referred to the rules regarding caucuses, but Aldarondo, without contradiction, reminded him that they had not yet decided on the order of discussion. At that point, ratification was discussed extensively after which the Hospital offered the dual ratification procedure or no ratification. The Union maintained its position on ratification only for the union proposals, i.e., the Hospital negotiators' agreement was final and binding, but the Union's agreement was subject to ratification. The Hospital had argued that up until union membership ratification, it ought to be able to rescind agreement on review of the board of directors. Quinones refused. Aldarondo said ''we are at deadlock at the start.'' Quinones answered, ''exactly.'' They both agreed to adjourn at that point on Aldarondo's suggestion that the Union reevaluate or they both go to the NLRB to settle the ratification issue. Aldarondo suggested that they meet the following Wednesday and that they make it ''more or less a routine.'' Quinones agreed to do so at 3 p.m. but on Tuesday, March 1. It was agreed.

Quinones offered second thoughts and suggested the possibility of meeting more often lest 2-hour weekly meetings result in a failure to discuss economics until March 1986. Aldarondo pointed out that the CBA had expired on March 12 and the Hospital wanted the Union's response to its written proposal. Quinones interrupted and said that the Union refused to answer that proposal in writing. Aldarondo offered to accept a written or verbal response. Quinones (without explanation) referred to the old CBA as its proposal. Aldarondo stated that economic issues raised by the Hospital would prove to be more troublesome to the Hospital but if the Union would agree to its proposal, albeit with some changes, it would be easier. Quinones asked for an explanation.

Aldarondo replied, ''If the Union agrees to the economic concessions proposal, what is left will be easy.'' Quinones then suggested that the Hospital agree to a salary increase and to go ''onward from there.'' Aldarondo told him ''no the ball is in your court.'' Quinones then however suggested adjournment and also suggested that at the next meeting, they ought to discuss the frequency of negotiations and duration of meetings. The idea was not raised again, and there is no evidence the Union pressed for more frequent, longer meetings either in the transcripts, in testimony or in correspondence. The meeting ended at an unspecified time in a transcript of 42 pages.

d. *March 15, 1985—Meeting three*

The meeting started out with Quinones' irate vituperation in response to a letter sent to him from Aldarondo on March 12. In that letter, Aldarondo castigated Quinones for the Union's abrupt cancellation of the agreed-on March 12 meeting. He also accurately summarized the substance of discussions and with respect to ratification, he again insisted on ratification or no ratification for both parties and cited the Union's insistence on ratification only for union proposals. Quinones then stated that the Union could not respond to the Hospital economic proposals because the rules of the game ''have not yet been established'' and economics are ''generally'' left to last. Aldarondo asked to start negotiating with the most important issue, i.e., economics, and not waste time discussing ''rules,'' i.e., ratification procedures, etc. Amidst some discussion of extraneous issues regarding some kind of alleged restaurant meeting between Rivera and Velez and supposedly what was said about the Union, Quinones returned to the ratification issue and in an extensive speech defined the Union's sole right to ratification.

During the discussion of the ratification issue, Quinones insisted on ''classic rules of the game,'' and Aldarondo replied that they could ''start'' to negotiate ''whatever you want to.'' As the ratification discussion persisted, Aldarondo offered to put the issue to a mediator and Quinones agreed. There was some discussion of a no-strike agreement but Quinones deferred further discussion of it pending his receipt of legal advice. When Aldarondo pressed for agreement then and there on a no-strike, no-lockout clause, Quinones accused him of ''cross examining'' him and refused to answer questions about the Union's strike intentions. That topic was discussed at some length until Aldarondo returned to the issue of ratification and made an offer of some language.[9] Quinones agreed to consider it after discussion with the unit employees. Quinones tried to defer agreement on a tentative date for a next meeting, but Aldarondo insisted on agreement then and there. Quinones then pleaded that he had been absent extensively from San Juan and did not know when he was to be available. After more colloquy, they agreed to meet on March 20 from 1 to 4 p.m. Aldarondo then proffered some unit information requested except for unit employee addresses which he claimed were difficult to obtain. Quinones chided the Hospital for always claiming such difficulty and stalling with the production of unit members' addresses. They then discussed the proffered information and personal ratification procedures, etc. Amidst some discussion of extraneous issues regarding some kind of alleged restaurant meeting between Rivera and Velez, and supposedly what was said about the Union, Quinones returned to the ratification issue and, in an extensive speech, defended the Union's sole right to ratification. The parties discussed personal problems raised by Negotiator Cruz. The meeting adjourned at an unstated time with 51 pages of transcript.

e. *March 20, 1985—Meeting four*

The meeting started at 1:30 p.m. Quinones tendered a proposal on ratification. He then demanded to know why unit employee negotiators were apparently not being paid for negotiating time. Clearly, there had been no agreement to do so, and Aldarondo reminded him of the agreement for ''syndical leave,'' i.e., leave without pay.[10] This occurred amidst more discussion of the ratification issue. There was further argument about the lack of payment to employees for negotiation time and Quinones' insistence on it. Aldarondo denied ever having agreed to it, pointing out the definition of unpaid syndical leave in the expired CBA.

Aldarondo suggested deferring discussion of ratification to get on with negotiations. Quinones accused the Hospital of not agreeing to even the minimal rules and predicted physical exhaustion of its negotiators if they continued with such techniques. Quinones continued to castigate the Hospital negotiators' behavior as ''ugly,'' ''obstructive,'' and ''unlawful.'' Quinones reminded Aldarondo of alleged off-the-record discussions where Quinones suggested negotiating easy things first. He accused the Hospital of being provocative and reiterated his protest over the refusal to pay employees for time spent in negotiations, calling it an unfair labor practice and an attempted provocation to strike which the Union would not be tricked into.

Aldarondo offered to agree to a no-strike, no-lockout clause, but the discussion again turned to the ratification issue. Aldarondo offered that ''everything is negotiable,'' but he refused to ''subsidize'' the Union by paying the employee negotiators. He however suggested that perhaps they can negotiate some sort of package on the issues of ratification, pay for union employee negotiators and a no-strike, no-lockout clause. Quinones responded that pay for employee negotiators was ''not negotiable.'' He resisted further efforts by Aldarondo to negotiate that demand and repeated that it was a ''nonnegotiable'' demand. After extensive further argument over ratification, Aldarondo insisted that they move to another subject because, he asserted, ratification was a nonmandatory subject of bargaining under the NLRA. Quinones, however, insisted that they continue to discuss it, which they did at length. Aldarondo again insisted that they get on to discuss other topics because ratification is of no interest to the Hospital and can be deferred. Quinones responded:

> [W]e continue like that, we deadlock and within a couple of days you come with a final offer for us because there is a deadlock, there is an impasse. There it is.

[9] The Hospital recognized the union right to ratification by members but if ratification failed, either side ''may'' reopen negotiations and until ratification, all agreements were preliminary. Quinones only quibbled about the ''may'' and suggested instead ''will.''

[10] Davila's admission in cross-examination, after he was confronted with his own bargaining notes, fully corroborates Aldarondo's position. Cordero made a similar admission.

Aldarondo then suggested an alternative, i.e., resort to the NLRB, where he claims he will be vindicated. Quinones warned him to avoid that alternative.

Aldarondo offered modification of a CBA recognition of the Union's right to ratification. After some discussion and a caucus, there was an agreement to initial that proposal.

The parties then went on to discuss the failure of Respondents' proposal to include union recognition language. After a petulant reply from Aldarondo that recognition is the business of the NLRB, not the employees, and that there was no need for such ceremonial language just because it was there in the past, Aldarondo agreed to include some kind of clause containing such language in exchange for the Respondent's proposal regarding a management-rights clause. Quinones appeared to be agreeable to a management-rights clause if a nondiscrimination clause was added. Aldarondo offered to sign such agreement.

Quinones, however, went on to discuss the issue of the Hospital bargaining unit language proposal. Quinones insisted that the old CBA language be unchanged. Aldarondo argued that negotiation is unnecessary because they can simply adopt the language of the NLRB unit certification but that, in any event, it wanted section ''C'' removed, i.e., the restriction on nonunit employees' and supervisors' performance of unit work. The issue was left pending but Aldarondo said that this proposal, as all of the Hospitals' proposals, were negotiable and if the Union was interested, it was invited to offer a quid pro quo counterproposal. Aldarondo said he still thought it a waste of paper to expand on the NLRB unit description. The Union insisted that the issue was important.

The parties could not agree at that point on the next sequence of articles to be negotiated, i.e., the Respondents' proposal or the old CBA sequence. The Hospital asked to next discuss its proposed article IV, i.e., ''Probationary and Temporary Employees,'' which proposed a 6-month probation and defined temporary employees as those who performed emergency work or who substituted for permanent employees on prolonged absences and vacations. The Union refused and insisted on discussing its article IV of the old CBA, i.e., union shop. Aldarondo stated that the Hospital wanted no union shop language except ''the one that was provided by the Labor Relations Board.''

Aldarondo then offered, at page 49 of the transcript, to negotiate the union shop issue jointly with the wage freeze proposal. Quinones refused to discuss salaries ''at this moment'' for two stated reasons. First, the Union was in the process of ''investigating'' and ''analyzing'' ''information of an economic nature.'' Second, he stated, it is the Union's ''firm position'' to obtain salary increases and to maintain all present benefit levels. He made it clear that only ''within that concept we are willing to negotiate.'' In response to Quinones, Aldarondo stated that the Hospital will negotiate the Union's demand for raises and benefits status quo, but its own bargaining object is to obtain a wage freeze. He repeated an offer to discuss the salary and union shop issues jointly and suggested that salaries were of economic interest to the Hospital and union shop ''implies'' an economic interest for the Union. Quinones rejected as ''incredible'' that suggestion and refused to discuss salaries because it was not ''in the order of negotiation,'' and he complained that negotiating economics jointly with noneconomic was a ''new technique'' he had never experienced before.

In the midst of a protracted squabble over what should be discussed next, Aldarondo asked to discuss the probationary employee issue, but Quinones accused him of being an examiner and not a negotiator. Aldarondo accused Quinones of halting the negotiations. Quinones demanded again to discuss the union shop issue. Aldarondo responded that the Hospital wanted no union shop and was ''firm'' about it. Despite repeated requests by Aldarondo to discuss the probationary employee issue, Quinones demanded next to discuss dues-checkoff and insisted that they discuss the Union's order of proposals. Aldarondo responded that he Hospital has no interests in being the Union's dues collection agent but suggested that they leave the issue as pending.

Quinones then led the discussion to the issue of the number of union stewards and delegates, i.e., Hospital's article III, which the Union rejected (art. VI, old CBA). Aldarondo went on to explain in detail the reasons for the Hospital proposal for a reduction in stewards, i.e., the old number was too large and a drain on Hospital resources because all employees were in close proximity to a steward, at most a distance of one floor above or below. Quinones agreed to consider the proposed reduction in stewards after consultation with unit members and intimated that he might change his opposition, whereupon Aldarondo responded, ''great!'' They continued on with the discussion and Aldarondo said that his position on the number of stewards was negotiable.

Finally, Quinones led the discussion to the probationary and part-time employee issue. The old CBA provided that part-time employees who worked 20 hours or more per week would be covered by the CBA insofar as union dues, dues checkoff and, to a limited extent, entitled certain fringe benefits. They were not entitled to seniority. The old CBA unit description was silent as to part-time or ''regular employees.'' The Hospital's unit description proposal referred only to all ''regular'' employees. The old CBA permitted the use of temporary nurses for emergencies and as prolonged absent nurse substitutes but who, if employed more than 3 months, must pay monthly union dues and be subject to checkoff and covered by the grievance procedures. The Hospital proposal eliminated that addendum and referred only to ''regular'' employees as unit employees. Aldarondo asked Pou how many part-time employees were employed at the time. Pou answered that there were employed two or three irregular or ''per diem'' nonunit nurses. Aldarondo then suggested deferring that issue.

Quinones formally asked the Hospital to not employ per diem nurses because they take unit work from unit employees. Aldarondo referred to the expired CBA clause setting forth a minimum of work hours as a condition precedent to the deduction of dues and fringe benefit entitlement. The concept of per diem nurse wage was discussed. Quinones warned that if the Hospital hired 20 to 25 per diem nurses, it would constitute an unlawful unilateral change in working conditions. Aldarondo promised to discuss in advance any proposed changes in the employment of per diem nurses, which issue he said deserved ''particular study'' in view of Quinones' apparent expressed position that per diem nurses are not included in the old CBA definition of part-time or temporary employees. Aldarondo defined a per diem nurse as an 8-hour-a-day part-time employee utilized to cover a shift

for vacationing nurses or where there are insufficient unit nurses available. He agreed that the definition was subject to negotiation. Aldarondo noted that it was now 5 p.m. and Quinones himself had scheduled a union meeting that night.

Quinones then warned the Hospital against any unilateral implementation on an alleged impasse. He stated his understanding of the law that there must be certain conditions met, one of which was that an employer must prove an ''inadequate'' economic situation. He stated however that the Union was aware that the Hospital is in a good economic situation and that the Hospital maintains and has always maintained very low rates for a ''section of its patrons'' for specific purposes which, however, he says he will not discuss at that time. Quinones then warned Aldarondo that the Union would not accept economic reports which do not correspond to economic reality. He claimed that the Union had ''abundant information'' about the Hospital's financial situation which ''conflict'' with representations of financial distress. He stated:

> [I]n due time we will bring this to the bargaining committee such information . . . . We are familiar with the operation of the Hospital and the operation of the [Association] . . . and we expect you to assume a reasonable attitude toward us.

Aldarondo promised to be reasonable but he assured Quinones that the Hospital's economic situation ''is difficult,'' that it was necessary for all to make sacrifices to preserve jobs and that other bargaining units have observed a reduction of jobs, and much nonunit work was now subcontracted. Quinones accused Aldarondo of being ''misinformed.'' When Aldarondo urged him to disclose any contrary information, Quinones and Cruz stated, ''It will come. It will come.'' Aldarondo asked for it ''now'' so he could verify it, but Quinones refused with the response, ''in due time.'' Quinones explicitly promised that he would later disclose all his information so that Aldarondo could meet with the Hospital board of directors and analyze it. At an unspecified time, the meeting ended at page 78.

f. *March 26, 1985—Meeting five*

The transcript fails to note an announcement or a starting time and appears to commence during a discussion of part-time employees. Vega appears to be the chief Hospital spokesperson. The Hospital sought discretion to use part-time employees when necessary. The Union demanded that temporary employees be included in the unit. Vega responded that unit inclusion is negotiable. A protracted discussion next ensued over the proposed extension of the probationary time from 90 days to 6 months. Without resolution, the Hospital argued that it had experienced problems in the past when technical deficiencies of probationary nurses were discovered well beyond 90 days. The Union argued that 90 days was sufficient time to evaluate a professional graduate nurse.

Vega then referred to the issue of its proposal of part-time employees, i.e., to be used for emergencies, etc. Quinones directed the discussion to the topic of per diem nurses it understood were then being employed by the Hospital to wrongfully perform the work of unit nurses. Vega insisted that they were used only out of necessity for a fixed period when no unit nurses are available or in prolonged absence of a regular employee. Quinones wanted the old CBA changed to prohibit the use of per diem nurses. Vega responded that they were only used out of sheer necessity. Quinones suggested that perhaps the Union might contract some sort of temporary employee referral service. After a break in the tape recording, Quinones accused the Hospital of making proposals which eliminated the dues obligation and representation rights of temporary employees and which were calculated to reduce the Union to an invisible status, despite Vega's assertion that temporary employees were employed for short periods of time. Vega suggested that the union checkoff, i.e., collection of union dues by the Hospital, was of economic interest to the Union so that they should discuss it jointly with the wage freeze proposal which is the Hospital's economic interest. Quinones indignantly rejected that suggestion as an implication that the Union needed the Hospital to collect dues. He stated inexplicably: ''It is not for the Hospital to collect dues for the Union. We are not asking it and will never request it.'' Vega immediately asked him to repeat that statement but Quinones refused, saying he could not remember what he had just stated. Vega stated that the Hospital wanted to be free of union internal affairs, i.e., dues checkoff.

Quinones launched into an attack on Respondent's motivations for its regressive proposals, i.e., to raise distrust, conflicts, destruction of a good union relationship, etc. Vega responded that he thought that what they had been doing up to this point in negotiations was a clause by clause process of identifying real differences without getting into detailed discussion. Quinones responded that the Union was willing to negotiate ''everything'' and that in ''some areas'' it was flexible. Vega protested that the Union had not even submitted a counterproposal. Quinones confirmed that the union position is its original proposal. After some discussion over whether they were or were not negotiating, Quinones turned to the topic of unit employee seniority, and Vega proposed seniority recognition only as obliged by Commonwealth statute, i.e., ''Law 80'' which establishes certain minimal employee seniority rights, but said that this position is negotiable. The Union insisted on status quo of the old CBA seniority rights (art. VIII, old CBA) but with the addition of stewards' superseniority.

The parties discussed the Union's proposed change regarding the arbitration procedure (art. X, old CBA). Vega expressed a willingness to accept some changes and offered to discuss some modification counterproposals. Quinones asked for time to study it and deferred the subject to the next meeting. Vega said that both sides wanted easier grievance and arbitration procedures and suggested they might tie it in to negotiation of the requested management rights clause. Vega reminded Quinones of his promise at the last meeting to submit a counterproposal in management rights. Quinones said it would be discussed ''later,'' and then turned to the topic of work schedules (art. XI, old CBA). The Hospital insisted on changing the old CBA work schedules to establish work shifts. They agreed to defer discussion, with Vega reiterating the negotiability of the issue.

The next article of the old CBA, XII, included ''Salary Increases, Basic Salary, Differential Pay,'' etc. Accordingly, Vega stated the Hospital's position, i.e., a salary freeze, was necessary because at its current level of operation, the Hospital's position was ''precarious'' and it was not able to

grant any kind of raise ''at this time.'' Quinones responded: ''We are starting to make our study. The Hospital has made its economic study . . . we are going to conduct ours too.'' Vega assured the Union that it would show Hospital operational losses and an accrued debt close to $1.5 million. Quinones, however, reacted by saying that even the past 3 years of raises given to the nurses were inadequate and that there were now 31 nurses of a total 115 being paid at the basic salary rate. Quinones stated that the Union was willing to negotiate a reasonable agreement because he believed that the economic situation of the Hospital was sound (it now becomes apparent that his definition of reasonable necessarily entailed reasonable raises). Quinones then stated that the Hospital was well aware that a large portion of its patients was treated at less than market cost for the objective of getting teachers to join the Association which, in turn, subsidized the Hospital. He accused the Association of forcing the Hospital to operate with ''scant profits.'' He acknowledged that the Hospital's financial statement will not reflect ''exorbitant profits,'' but that if an economist scrutinized it without recourse to the Association's finances, he would conclude that the Hospital is close to bankruptcy and should have gone bankrupt years ago because of economic restraints imposed on it by the Association. The Hospital, Quinones charged, could not exist as an independent entity.

Quinones went on to elaborate that the rate charged teachers were ''ridiculous'' and made possible only by the exploitation of the nurses' depressed salaries. He accused Velez and the Association board of wrongly benefiting teachers at the cost of reduced unit member benefits and the exploitation of unit employee rights. He charged that it was ''pitiful'' that a large number of Hospital employees were the object of an unfair Hospital policy while Velez, through the media, was asking for teachers' raises, many of which he alleged were higher than the nurses, and that Velez also was making political demands for approval of the teachers' right to collective bargaining at a time when the Association representatives were trying to set back the rights of the Hospital's workers. He alleged that this was part of a plan to destroy the Union. He insisted that the Hospital can afford raises, but he conceded that it was not as profitable as some larger Hospitals but that he would be reasonable as to the amount of raises that he would negotiate.

Vega responded by insisting that the Hospital's economic plight was real and not fictitious; that financial statements disclose the losses; that the Hospital has to invest in costly new equipment; that Medicare income is reduced; that cost-cutting efforts have been made; and that 60 beds were removed (none of these assertions were even refuted). He claimed he had no idea where Quinones had obtained contrary information, but he insisted that there are other bargaining units with which the Hospital must negotiate; that the current salaries necessitate losses; that the Hospital has to ''freeze everything''; that it must reduce fringe benefits ''or else''; and that it is ''real and not fictitious.'' He did not, however, deny the alleged Hospital relationship with the Association, nor deny the advantageous relationship it had with respect to discounted medical service, nor did he make any explicit representation that the Association could not afford to pay more for the Hospital services so that employees would not have to suffer economic losses. He did not deny the allegation of Association teacher self-interest or greed, motivation alleged by Quinones, although perhaps it was arguably implied in his response that the losses were for real and not fictitious, i.e., not part of a scheme of exploitation.

Thereafter, Quinones went on to insist that negotiations proceed on the premise of salary increases. Vega responded that he had nothing to offer saying, ''There's nothing. Honestly there's nothing to give.'' He argued that if capital improvements are not made, then the Hospital will go down the drain, i.e., the building is 25–30 years' old and additions must be constructed. Quinones answered that instead of asking nurses for sacrifices, the Hospital should ask $50 each from all the doctors who had gotten rich over the years working in the Hospital. Vega answered that the Hospital had reviewed its contract with all professions including doctors, had subcontracted certain work, and had determined the necessity of freezing the salary of all Hospital employees in equal terms and to reduce benefits.

Quinones refused to accept Vega's statement as the Hospital's ''real'' position. He characterized the Hospital's proffered explanation as ''inconsequential'' and asserted that it would be impossible for the Hospital to retain nurses who would rather resign. Quinones insisted that a demand for raises was reasonable. Vega insisted that a wage freeze and reduced benefits were reasonable. At page 59 of the transcript, the tape recording ended.

The meeting continued briefly with a new tape and Quinones asking whether they wish to resume negotiations. Vega agreed to resume. Quinones promised to submit a new union proposal. They exchanged expressions of a willingness to negotiate. Quinones stated that the Union would submit an economic counterproposal as a ''sample of our good faith,'' but that it refused to negotiate salaries next because, as Quinones stated, if the Union were to do so, ''as soon as I bring [that] counter offer, we find ourselves in an impasse, here, see.'' He then suggested that they negotiate and agree to what they are able and to defer everything else. He promised to draft a list of all agreed-on items for the next meeting. Vega stated his expectation that economic clauses would be the next item for negotiation. Quinones uttered an evasion and repeatedly assured the questioning Vega that he would produce an economic counterproposal inclusive of salaries and all labor cost items at the next meeting. Quinones told Vega he would need to ''study'' to see ''how far I can go.'' After a brief reiteration of positions on the topic of the number of union stewards, the meeting ended.

Thus, Vega was clearly justified in concluding that the Union would submit an economic proposal and at least start discussing economics at the next meeting. The ending time is not specified.

g. *April 3, 1985—Meeting six*

The transcripts fail to indicate how the date was set for this meeting nor does it reveal the starting time or meeting duration. From the context of the transcript, I conclude that the exhibits marked part I and part II are in reverse order to the actual proceedings. The meeting opened with a greeting by Quinones and his reference to rumors about a possible strike and alleged harassment of an employee negotiator by a security guard. At that point, the Hospital comptroller, Carlos Garcia, was identified to Quinones and welcomed by him to the negotiations. After disclaimer and assurances, Vega asked for the expected counterproposal. Quinones replied that

the Union would ''react to economic proposals later on'' and he complained about his disrespectful treatment by a security guard at the Hospital and threatened to file an unfair labor practice charge over it. On Quinones' lead, they reviewed areas of agreement and disagreement starting with article VI (old CBA). At article X, ''Grievance and Arbitration Procedure,'' the Union explained its proposal and its objective for certain changes it desired. The proposals on this issue were discussed and explained by both sides.

The parties continued with their review of agreement, nonagreement, and joint deferral of contested subjects in a variety of articles. Areas of agreement covered, inter alia, work schedules, overtime, meal period and double pay, method of overtime computation, personal leave, pension plan, general disposition clause, nondiscrimination clauses, and separability of clauses article. Aldarondo then suggested that the proceeding had now come to the point of discussing economic issues. Quinones responded that the economic issues were ''very delicate,'' and their negotiations ''were already being talked about in the whole country.'' A few other noneconomic proposals however were discussed and agreed on or deferred. The first part of the transcript ended at page 72, when Quinones announced: ''This is all we have so far.''

The second part of the taped portion of the meeting started with Quinones again making an announcement:

> [By submitting an economic counter proposal] The Union does not agree [to] change the agreement of the parties at the beginning of negotiations to the sense that we first negotiate non economic parts and the economic ones afterward.

Quinones then went on to announce the specifics of the Union's written economic counterproposal which included substantial increases in salaries as well as increases as other benefit costs. Vega quickly challenged the alleged agreement as to a fixed bifurcation and priority of negotiated issues, i.e., noneconomic first and then economic, and accurately set forth his recollection of what was agreed at the first meeting. He characterized the union economic proposal as not significantly reduced from the last proposal, whereas the Hospital still insisted on a salary freeze. He stated that he was prepared to tender to Quinones financial statements which reflect that the Hospital had an excess of expenses over income in 1984 of nearly $100,000 as well as in 1983, and that it expected conditions to deteriorate.

Quinones responded that ''we insisted in the past to discuss noneconomics first,'' and the Union had merely submitted its economic offer as a ''gesture of good faith.'' He stated that that counterproposal did not change the Union's intent to only negotiate noneconomic issues first. He openly admitted that if they were to negotiate economics at that point of negotiations, it ''would promote as soon as possible'' what he called an ''artificial deadlock.''

Quinones stated his qualified intention to ask in the future for financial statements ''if necessary'' and even more information ''if necessary'' beyond those statements for study by economic experts it will hire in the future. Quinones compared the Hospital claim of poverty to an allegedly spurious claim attempted by another health care institution but which ended up with salary increase agreements. He characterized the Hospital claim of poverty as ''illusions'' and stated: ''Therefore I insist we continue dealing with those areas where we have no major problems.''

Vega reiterated the financial losses of the Hospital. Quinones asked when they planned to shut down. Vega and Pou responded that there was no closure intent but other measures would have to be taken, e.g., reduction in employment and subcontracting of services. Vega then tendered to Quinones financial statements as of July 30, 1984, prepared by an independent auditor reflecting losses and labor costs.

Quinones' response was that they adjourn so that the Hospital, i.e., not the Union, would reassess its position, after which they would resume negotiations which will result in ''some increases'' without bankruptcy. The transcript of 87 pages does not reveal any discussion as to the next meeting date.

h. *April 15, 1985—Meeting seven*

The transcript of this meeting fails to indicate times, duration, or references to setting of the next meeting. It is a brief transcript of about 33 pages indicating a commencement and an ending without interruption, and a reference there by a participant to its duration of only 1 hour.

The meeting commenced when Aldarondo asserted that the parties agreed at the last meeting to start discussing the economic clauses. He called the union counterproposal unacceptable and referred to the financial statement given to the Union at the prior meeting and again insisted on a salary freeze and a reduction in benefits costs.

Quinones immediately accused Aldarondo:

> [Y]ou are putting words in [my] mouth . . . *our economic [counterproposal was] aimed to demonstrate our good faith . . . not an intention to discuss [economic issues] but rather first noneconomic* aspects.

He insisted that such was the original agreement. Quinones asserted that he made the same statements in outside conversations with Hospital spokesperson. He then continued:

> I am about to laugh because *the Union has conclusive evidence, clear and precise* that the *Hospital is sound, very sound* see . . . on the prior occasion well we did not have all information. *Today we do have it.*

Quinones went on to accuse the Hospital of pushing an ''artificial position'' to bring on impasse by proposing noneconomic changes to the old CBA that had endured for years. Aldarondo argued that they ought to start negotiating economic issues, but that they had never agreed to negotiate noneconomic issues first, but rather they agreed to discuss important clauses which have an economic impact upon the Hospital. Quinones again argued that they had agreed to exclusively negotiate noneconomics first and thereupon accused the Hospital of creating ''conflicts'' in the Hospital and engaging in conduct calculated to provoke the Union to fall into a ''trap.''

Aldarondo again demanded to start negotiation of economic aspects and urged Quinones to stop talking about ''fantasies'' regarding an alleged crisis in the Hospital (a possible reference to allegations of harassment). He stated: ''*We demand to negotiate economics.*'' Quinones responded that the Hospital's answer to the union counterproposal remained a wage freeze and stated:

> [W]e are willing to deal with that economic situation if and when the employer makes—in the first place deals with the rest of . . . the noneconomic, and in the second place when the employer decides to change its position in regard to the economic issues, because our nurses demand salary increases, see.

Aldarondo characterized the union demanded increases as ''unheard of,'' to which Quinones answered: ''*[W]e have so much information of an economic nature about the Hospital that we are going to bring it to you when appropriate.*'' Quinones then went on to allege misappropriation of Hospital resources by its management, i.e., maintenance employees working at homes of management and the boats owned by Administrative personnel.

Aldarondo, in effect, accused him of lying and of trying to distract him from the point and, again, asked the Union to negotiate the economic terms of the CBA. After Quinones effectively called Aldarondo a liar, he was asked by Aldarondo to submit proof of his allegations. Quinones went on another tangent and made more allegations of the misuse of Hospital maintenance employees, i.e., nonunit employees.

Aldarondo again demanded that the Union negotiate the economic issues and accused Quinones of evasion. Quinones denied having refused at any time to negotiate mandatory bargaining matters; to which Aldarondo invited him to begin with salaries and to start reviewing the union counterproposals. Quinones interrupted him and stated that they first have to ''agree what we are going to negotiate.'' Aldarondo answered, ''then let's agree.'' Quinones retorted that it would not be with economics according to the Hospital's unilateral decision.

Quinones again insisted that they had already decided to negotiate the noneconomic CBA articles first. Aldarondo answered that that was not true but, in any event, they should again discuss the ''rules of the game.'' Quinones asserted to Aldarondo that they will discuss ''what was decided.'' He went on, however, to charge: ''You started this process and began to discuss noneconomics.''

At this point, there is an apparent tape change. When the second recording resumes, Aldarondo reminded Quinones that ''at the beginning'' the Union was made aware of the ''transcendental importance'' to the Hospital of the economic issues. He charged Quinones with directing the discussion to noneconomic areas which were discussed. He further asserted until the negotiations reached a point, i.e., article XII—old CBA, salaries, etc., there had been discussion of the greater part of the noneconomic issues. Therefore, he concluded and stated it was this time now to discuss the economic issues.

Quinones again accused the Hospital of abandoning an agreed-on course of negotiation. He pointed out that they had reached agreement on some noneconomic matters, i.e., he wanted to reach agreement on all noneconomic areas before discussing economics. He asserted that he did not have ''amnesia.''

Aldarondo made it quite clear that the Hospital was not demanding an isolated, fragmented negotiation and agreement of economic issues prior to negotiation of the balance of the contract. He explained that the Hospital had stated that it will deal with management rights, appropriate unit, recognition of the Union, and other noneconomic issues, and had done so and is doing so in the order of topics so far discussed. Quinones, however, accused the Hospital of not wanting to negotiate and again accused the Hospital of having agreed to negotiate the noneconomic issues first.

When Aldarondo again asked Quinones to continue by discussing the economic issues, Quinones suggested adjournment because he concluded, the Hospital did not wish to negotiate. Quinones then denied the same accusation that he refused to negotiate economics. Aldarondo asked him when he would do so and was told he would do so when Aldarondo was willing to negotiate the noneconomics.

At that point in negotiations, Aldarondo clearly and explicitly placed on the Union the decision as to the course of those negotiations and the responsibility for the continuation of meaningful bargaining. He did so by responding to Quinones' challenge that he was willing to negotiate noneconomic issues ''right now, together with the economic issues.'' Quinones, however, again insisted that this was not the agreement of the parties which was, he again falsely asserted, to negotiate only the noneconomics first. After squabbling again over what had been agreed to, Aldarondo challenged Quinones to replay the tapes of the prior meeting. He received no response.

Aldarondo again offered to negotiate *any* important noneconomic proposals with the economic proposals and to discuss both jointly. That offer was characterized by Quinones as a refusal to negotiate. Quinones asked if the economic proposals were so important to the Hospital, why did it purpose so many noneconomic changes in the CBA. Aldarondo turned back his question by asking why the Union considered noneconomics so important in the face of its large economic demands. He asked the Union why it was demanding so much. Quinones answered that it had been traditional in Puerto Rico and in past Hospital negotiations to first negotiate exclusively the noneconomic contract terms. Aldarondo replied that he had not participated in past Hospital negotiations.

The meeting continued on with Quinones again demanding to discuss and negotiate exclusively the noneconomic CBA provisions. Aldarondo again offered to negotiate the noneconomic issues later or now, together with the economic issues. Quinones again repeated the false allegation of a breach of a prior agreement on the order of negotiations. Aldarondo agreed that they had discussed and touched upon all noneconomic issues and deferred negotiation on areas of disagreement and, again, he pleaded to start discussing economic issues. Quinones remained adamant and pointed out large areas of negotiation remained to resolve important noneconomic issues. To that assertion, Aldarondo readily agreed, but asked why Quinones was ''afraid'' to talk about the economic issues.

Quinones responded that he was not afraid to discuss economic issues and wanted to do so because the Union was aware that the Hospital was in a ''sound economic situation.'' Aldarondo thereupon demanded that the Union disclose such information, but Quinones turned away the demand by suggesting that Aldarondo himself ought to get informed. Aldarondo challenged Quinones to inform him. Quinones refused. They again squabbled over a series of challenges by Aldarondo to produce information contrary to impoverishment and, again, Aldarondo outlined the Hospital's allegedly poor financial situation and the proffered and tendered financial statements.

Quinones responded to the foregoing challenges by saying that the Union would produce its information ''as soon as it is pertinent and necessary,'' and that it was ''still not pertinent.'' Quinones promised, however, that it will expedite the negotiation process when ''we'' bring information.

Aldarondo asked to be informed when the Union intended to produce its information and the Hospital would ''gladly'' meet and negotiate but that as long as the Union refused to discuss economic issues, they would have to adjourn. Quinones offered to continue the discussion. He however did not offer to change his position on the order of negotiations, i.e., exclusive negotiation on noneconomic issues first. Aldarondo in exasperation noted that they had talked for an hour with no resolution on the future order of negotiable subjects and after requesting the Union to notify him when it was ready to negotiate the ''substantive aspects'' of the CBA, he terminated the meeting.

i. *Interim correspondence—Declaration of impasse—Notification of economic implementation*

By letter dated April 24, 1985, addressed to Aldarondo and signed by Quinones, the Union set forth its willingness to resume negotiations and indicated the area to be next negotiated, i.e., proposed managerial rights and the stewards' issue. It also accused the Hospital of an unwillingness ''to negotiate the noneconomic aspects of the agreement, as it was agreed to initially.''

By hand-delivered letter dated April 29, 1985, to Quinones from Aldarondo, the Hospital formally responded. It accurately accused the Union of refusing ''to discuss or enter into negotiations about the economic aspects of the [CBA] being negotiated,'' and conditioning ''any negotiations of the economic aspects to the previous negotiation and agreement as to the noneconomic aspects.''

The letter further accurately asserted that there had been no agreement at the first meeting as to the order in which the articles would be discussed. It accurately recalled that, in fact, in negotiations they started to discuss noneconomic matters ''in general terms'' and that the parties initialed clauses and reached some agreements about several noneconomic clauses and went on to accurately summarize the status of negotiations. In conclusion, that letter set forth:

> Through this means we inform you that we were greatly surprised by the attitude assumed by Unidad Laboral during the meeting held last April 15 when it insisted to a point close to an impasse in not discussing the economic aspects of the Collective Bargaining Agreement. As we indicated to you on that occasion, the discussion of the economic aspects of the Collective Bargaining Agreement is of vital importance to the Hospital. The precarious economic situation of the Hospital demands a prompt solution of the discussion of the economic aspects of the Collective Bargaining Agreement. In fact, during this last meeting you stated that you had financial information which indicated that the Hospital was in good financial status, however, you refused repeatedly to submit or discuss the same. In view of the Union's refusal to negotiate the economic aspects, we have to conclude that there is an impasse between the parties.
>
> In view of the impasse situation, in regard to the economic aspects of the Collective Bargaining Agreement, the Hospital has no other alternative but to proceed to put in effect the economic offer made to Unidad Laboral. In keeping with what is above stated, we hereby inform you the Hospital's intention of putting in effect its economic offer effective on May 16, 1985. Despite having this intention, we again reiterate our best willingness to negotiate the economic aspects of the new Collective Bargaining Agreement with Unidad Laboral.

j. *May 9, 1985—Meeting eight*

Although the parties failed to stipulate with respect to five pages of transcript in the transcript of the August 26 meeting, I credit the uncontradicted testimony of Vega that it is an accurate rendition of the missing first segment to the exhibit containing the May 9 transcript. Furthermore, the context necessitates the conclusion that is not part of the August meeting, e.g., it refers to prospective dates, such dates, as May 16, that must have preceded the August meeting. Neither segment indicates an opening announcement nor time of day.

The May 9 meeting was also attended by Gonzalez. In reaction to Gonzalez' presence, Quinones demanded to know why Gonzalez was produced to give an economic explanation inasmuch as ''the economic aspect is not under discussion.'' Quinones called his presence an act of disrespect to Quinones and to Gonzalez because: ''[N]obody is going to listen to information that does not have anything to do with what is being discussed. That is all there is.''

In an apparent reference by Quinones to the April 29 letter, Vega reiterated the Hospital intent of implementation of its economic offer ''as of May 16, 1985, unless, of course, we reach a different agreement.'' Vega went on to explicitly state the articles to be implemented, i.e., articles VIII; X on holidays, page 23; XI on sick leave, page 26; XIII, maternity leave, page 31; XVI, Christmas bonus, page 35; XVII, uniforms, page 36; XVIII, medical and Hospital services, page 37, of the Hospital proposal.

Vega again alluded to the Hospital offer to negotiate jointly economic and noneconomic matters and characterized the Union's accusation by the Hospital of responsibility for an impasse to be ''frivolous.'' Vega repeated the offer to negotiate all issues jointly and stated that its reasons to do so was the Hospital's precarious economic condition. That offer was met with laughter by Quinones who accused Vega of being crafty and given to distortion. Quinones went on to state the Union's position ''for the record.''

Quinones denied having refused to negotiate ''any issue'' and accused Vega of untruthfulness. He denied being ''frivolous.'' He accused the Hospital of creating an ''artificial impasse,'' so that it could implement its economic concessionary proposals. He alluded to another health care institution which had tried to do that but ended up having had to rescind the implementation.

Thus, under his perception of the law, Quinones was well aware that as long as he could keep the negotiations going without even discussing economics, despite the Hospital's attempt to use noneconomic proposals as quid pro quo for concessions, then the longer impasse would be postponed, the longer the unit employees would avoid any concessions.

Those concessions and any economic concessions, as we shall see in subsequent negotiations, he would even more virulently and adamantly refuse.

The second stipulated segment of the transcript commenced with Quinones' assertion that had the Hospital agreed with his ''rules of the game,'' the parties would already have finished and agreed-on noneconomic issues. This is a most remarkable observation because the Union had refused to discuss economic issues prior to this point, and yet vast areas of noneconomic matters remained on the table. Quinones then denied that the Hospital had ever agreed to negotiate economic and noneconomic matters jointly. He rejected the notion that union shop was an economic interest of the Union and bitterly castigated Respondent's resistance to check off as an illegal offensive tactic. Quinones again asserted that it was traditional in Puerto Rico to negotiate and to agree on noneconomic matters before discussing economic issues. He again insisted on that order of negotiation.

Aldarondo accused Quinones of misrepresentation with respect to the ''rules of the game.'' He rejected the suggestion that union shop negotiation was a condition to a discussion of economic issues. Aldarondo asserted that the Hospital had been willing to negotiate the recognition clause and the management-rights proposals but the Union refused and had insisted that it would not discuss the union shop clause. Aldarondo also insisted that the Hospital had said that employee payment for negotiating time was a negotiable issue and agreement was possible, but that the Union would not discuss it. Aldarondo reminded Quinones of prior assurances that all the Hospital's proposals were negotiable and that although there were some agreements, there remained a substantial amount of noneconomics to be agreed on. He again asserted that if all the articles of the contract could be discussed together, agreement would be reached; but that the Union had attempted to impose its own order of negotiations and had flatly refused to discuss economic and noneconomic issues jointly.

Aldarondo stated that in view of the Union's refusal to discuss economics until after a negotiation and agreement on noneconomic matters, there was nothing left but for the Hospital to effectuate its economic proposals as notified in its letter of April 29. Aldarondo stated that he knew of no other course of action unless the Union were now willing to negotiate but, he concluded, the Union did not even want to listen to an explanation of its economic position. He asserted that the Hospital had even presented the Hospital comptroller, Gonzalez, at negotiations for the purpose of answering any questions from the Union but that Quinones had ignored him.

Quinones' following response completely undermines the General Counsel's argument in the brief that Gonzalez was not proffered to give any information to the Union during the negotiations. Quinones initially responded by denying that he had refused to listen but in the next breath he stated that he did, indeed, refuse to listen to Gonzalez because Gonzalez had brought information to the bargaining table about topics ''not under discussion,'' i.e., the Hospital's economic condition. He accused the proffer of Gonzalez' expertise as a ''fast ball'' and an attempt to ''impose things'' on the Union. Quinones again insisted on quickly negotiating and agreeing on noneconomic matters first and ''get it out of the way.'' He reminded Aldarondo that the Union had even reduced its economic demands and would do so again. He however again asserted that the Hospital was not an independent entity but rather part of a complex with the Association. Quinones argued that the Hospital had produced Hospital financial information but that there were employees paid by the Association performing work in the Hospital.

Cordero then engaged in an argument with Aldarondo as to whether the Hospital had agreed to pay employees for worktime spent in negotiations. She incorrectly insisted that it had done so but now refused to pay it, which in turn caused hardship, especially when the Hospital negotiators appeared late at the meetings (the latter accusation emerged first at this meeting, i.e., tardiness of Hospital negotiators).

Aldarondo turned the discussion back to Gonzalez. He said Gonzalez was not there to negotiate but was present to explain the urgency of the Hospital's economic distress. He again urged a joint negotiation of economic and noneconomic issues. Quinones gave an evasive response, suggested the possibility of meeting with reduced committees later in the week, and made reference to a waste of time and possible violence which he explained as supervisors' and employees' mistreatment of each other.

Aldarondo again proposed an order of negotiation which included economic issues and reiterated otherwise the Hospital intent to effectuate its economic concessions on May 16, 1985. Quinones answered:

> You put the clauses [into effect] and I file a charge . . . and you act illegally in such a way that you attack the workers.

Quinones was called from the room to answer a telephone call.

When Quinones returned, Aldarondo repeated his request for joint economic and noneconomic negotiations. The following colloquy ended the meeting at 33 pages.

> QUINONES: . . . so called final offer is highly illegal, you cannot do that . . . and if you do it you are making a mistake, a damn tactical mistake.
>
> ALDARONDO: We have complied without our obligation to notify you about our intentions. If you want to discuss it or not, you think it is a tactical or illegal mistake well—that is your prerogative. But we accept to gladly to meet with you on a subsequent date a reduced committee and look for an alternative. So I suggest that we recess. I move we recess until we contact each other.
>
> QUINONES: All right.

k. *The May–June implementation of the Hospital's concessionary economic proposal*

It is the testimony of Respondent's witnesses that the Union made no request to meet and gave no indication of a willingness to change its position regarding the order of negotiations subsequent to the May 9 meetings and prior to May 16, or thereafter. The next meeting was held at the Commonwealth Department of Labor on July 8, 1985, under the auspices of the Federal mediator. Quinones testified that on about June 12, 1995, he had received a telephone call from Federal Mediator Irwin Gerald in the New York City Office of the Federal Mediator and Conciliation Service (FMCS) when Quinones was invited to meet with Respond-

ent on July 8 when Gerald planned to visit Puerto Rico. On June 12, Quinones wrote to the Federal Mediation and Conciliation Service a letter confirming his conversation.

Vega, on June 20, 1985, forwarded two letters, one to Quinones and one to the Federal Mediator and Conciliation Service's Regional Office in New York, New York. The former letter to Quinones alluded to an undated but ''recently requested'' resumption of collective bargaining by Quinones. It also asserted that, accordingly, a meeting between the parties had been arranged for June 26, 1986, but at an ''activity'' held by Quinones in front of the Hospital, Quinones reaffirmed to Vega the Union's firm adherence to its prior stated position and intent to not waive any previously acquired CBA economic benefit. The letter concluded that a meeting between the parties was futile and it was best to resort to the intervention of the Federal Mediation and Conciliation Service, which it stated was being done by the Hospital on that date.

Vega and Aldarondo both testified to off-the-record discussions, i.e., off the tape recorded part of negotiations. Aldarondo explained that they usually occurred either before or after the formal meetings, privately, with Quinones alone. Vega testified that after the August 26 meeting, Quinones stated forcefully to him that under no circumstances would the Union ever surrender any prior economic benefits obtained in prior negotiations. Aldarondo testified to similar such conversations in which Quinones said that he would be a ''laughing stock'' or ''crazy'' if he agreed to any economic concessions. In any event, Quinones told Aldarondo privately that he would not discuss economics until possibly later, but that he would never accept any concessions. Their testimony is not effectively rebutted by Quinones who, in any event, I find less reliable as a witness for reasons already noted.

Quinones testified that he felt that Vega's cancellation of the June 26 meting was intended as a punishment for a union picketing demonstration in front of the Hospital. He further testified that he had, many times subsequent to May 9, futilely attempted to communicate with the Hospital negotiators to resume negotiations. His testimony is generalized and not specific as to date and circumstance and thus is unreliable. On June 28, 1985, however, he wrote to Vega and asserted therein that the Union had been making efforts to meet with him since ''more than a month ago,'' which resulted in the June 26 date. In testimony, he said it was ''almost'' a month. In the letter, Quinones accused Vega of acting vindictively in canceling the meeting and pointed out that the parties had already agreed to meet with the Federal mediator on July 8. Quinones, in his testimony and letter to Vega, claimed that the resort to the mediation was an attempt to stall negotiations. He also testified that it was Vega who had ''requested'' to have a mediator come from the United States to enter into the negotiations.

All of the foregoing efforts to set up the next meetings is, of course, relevant to the issue of whether, assuming there was an impasse on May 9, 1985, the Union had given any indication of a willingness to change its position as to the order of negotiations prior to implementation of the reductions. In none of the correspondence is there any indication of such willingness. Furthermore, Quinones himself failed to testify that he had done so informally, nor did he testify that he made any specific communication, prior to the May 16 deadline set by the Hospital for the implementation of its economic proposals, which explicitly invited a desire to negotiate economic issues.

The testimony of Vega and Pou reveals that although the Union was notified that the implementation date was to be effective as of May 16, what really occurred was that the Union was given until May 16, 1985, to disclose a willingness to negotiate economic issues but that on that date or thereafter the economic proposal would be effectuated seriatim, as the mechanics of its application made it administratively possible. In light of the nature of the benefits reduced, it must necessarily have been manifest to all parties that the effects of the reduction would not be felt until such times as employees claimed their accrued benefits. The Hospital clerical personnel did not calculate the monthly accrual of these benefits until the completion of the month. Between May 16 and June 1, nothing was done. On and after June 1, 1985, the Hospital's payroll and other financial departments started calculating the reduced employee fringe benefits under the formula set forth in the Hospital's economic proposals. Thus the actual impact was delayed until a variety of subsequent occasions when employees found that they had accrued less medical services, sick vacation, holiday, other leave on applying for same, or finally when the Christmas bonus benefits were reduced. The accrual of new sick leave and annual vacation benefits occurred first, i.e., June 1, 1985. On July 19, 1985, Pou issued a memorandum to supervisors with explanatory instructions as to the new holiday pay calculations.

Although there is some dispute, or at least a refusal of Respondents at the trial to concede the implementation of all of the reductions in benefits as alleged in the complaint, the General Counsel adduced adequate credible evidence to sustain that complaint allegation.

I conclude that on a date shortly after the very first implementation of new reduced fringe benefits, probably around June 12, the Union and the Hospital agreed to meet with the intervention of the Federal mediator. Vega testified that Quinones had placed a telephone call to the mediator prior to his correspondence. Quinones accused Vega of involving the mediator. In any event, it appears that both had agreed to meet with the Federal mediator prior to Vega's June 20 correspondence which alleged an impasse and asked for direct intervention. Furthermore, they had also agreed to meet again themselves on June 26, which date was canceled by Vega for reasons stated in his letter to Quinones. It was admitted by Quinones that he did indeed participate in some informational picketing in front of the Hospital as alluded to in Vega's letter as an ''activity.'' He did not deny in correspondence, nor in his testimony, Vega's accusation in the same letter of Quinones' insistence to Vega during that picketing incident on adamant adherence of the Union to its last stated bargaining position relative to bargaining priority and consideration of a wage freeze and benefits reductions.

4. Postalleged impasse meetings—1985

a. *July 8, 1985—Federal mediation—Meeting nine*

The meeting at the Puerto Rico Department of Labor on July 8 was not precisely a resumption of the contract negotiations meeting. It was rather a meeting of the Hospital negotiators and representatives of all the other Unions representing Hospital bargaining units with the Federal mediator, Gerald.

There is a dispute between some of Respondents' witnesses and union witnesses as to whether or not there had been any kind of face-to-face confrontation between negotiators of both sides wherein the Union reiterated its unchanged position regarding the order of negotiations. Regardless of whether there was or was not, it is undisputed that no such intent to modify the Union's refusal to discuss economic issues was conveyed to Respondent Hospital's negotiators, either directly by Quinones or indirectly through the mediator. The Hospital reported to the mediator the status of negotiations and its implementation of its economic proposals upon belief of an impasse. The mediator did not testify of course. Quinones denied any face-to-face confrontation with Hospital negotiators, but he was silent as to whether the mediator mentioned the claim of impasse and implementation by the Hospital of its proposed fringe benefit accrual reductions.

b. *August 26, 1985—Meeting 10*

On August 8, 1985, Quinones wrote to Aldarondo and requested that he contact Quinones to resume negotiations, alleged that the Hospital's failed to make new offers at the meeting, alleged that the Hospital had refused to negotiate unresolved matters and requested resumed negotiations of the matters outlined in the union letter of April 24, 1985, including union recognition and union shop. The letter ended with the statement:

> The Union is willing to continue negotiating with the greatest possible flexibility and [is] willing to make changes to our initial demands.

Aldarondo responded with the suggested dates of August 21, 26, or 28 but reiterated an unchanged Hospital position. On August 20, 1985, the Hospital issued announcements to its employees with respect to the changes in the holiday pay policy.

By letter dated August 23, Quinones agreed to meet on August 26 and in answer to Aldarondo's response, referred him to the union letter of August 8.

The meeting of August 26, 1985, commenced at 3 p.m. A termination time is undisclosed, but the transcript is about 62 pages long. The transcript begins with Quinones questioning Vega about reports he received that the operating room manager made certain statements concerning sick leave benefit changes and also reports of a written announcement as to the elimination of certain holidays. At that point, Cruz alluded to Pou's alleged new calculation for earned vacation time.

Vega responded that all Respondents' economic proposals, i.e., articles 7, 9, 10, 11, 13, 16, 17, and 19, had been put into effect pursuant to prior notice to the Union. Quinones responded:

> All put into effect . . . what have you done, eh! One day you tell us that you intend to put the economic clauses into effect and several months later you come and put them [into effect].

Vega reminded Quinones of the May 9 meeting at which Gonzalez was proffered but who was ignored, as well as the April 29 notification letter of a May 16 deadline. (The Union admittedly actually received that letter on May 2, 1992.) Quinones, in language suggesting that he did not remember the May 9 meeting, asked Vega to repeat his statement. There was some interchange as to what the parties said separately to the mediator on July 8.

Quinones next stated that the Union had now invited the Hospital to negotiate a CBA regardless of the ''atrocities,'' i.e., implementation of benefits reductions. He said: ''I did not even believe that you would dare to what you did, to put into effect that.'' Quinones went on to offer to negotiate both noneconomic and economic issues but as to the latter, the Union's position is unchanged. He stated:

> [W]e continue to demand the same thing. Nothing has changed since this last meeting . . . I gave you 2 dates. I sent you a letter inviting you to discuss the articles covered by the letter of April 24, 1985 . . . sent last week . . . are you entering into negotiation?

Vega then reiterated the past status of negotiations and the position of the Hospital with respect to the order of negotiations. Quinones again insisted that there had been agreement to negotiate and agree to first exclusively noneconomic matters. He argued that if there had been no such agreement, they would have in fact started with the negotiation of economic matters. He accused the Hospital of bad faith and of making unlawful unilateral changes in fringe benefits. He stated to Vega: ''[Y]ou were too quick on the trigger. . . . *you fell into the trap*.'' The transcript ended as Quinones invited Vega to take advantage of the ''remaining minutes'' to initial certain documents.

c. *September 4, 1985—Meeting 11*

The transcript begins with Cordero's announcement at 2 p.m., 2:15 p.m., and 2:53 p.m. of the nonappearance of the Hospital negotiators. At 3:30 p.m., Vega arrived. This is the first reference to alleged tardiness since Aldarondo apologized for being late at one of the very early meetings. Thus, on September 4, the Union suddenly became assiduous in noting apparent tardiness. There is however no other evidence in the transcript other than the self-serving announcement of Cordero made in the absence of Hospital negotiators. Even there, there is not demonstrated a prior agreement as to 2 p.m. as the starting time. The meeting started when Quinones stated that his intent ''be clear'' on the record that the Union first learned about the implementation of the Hospital economic proposals on May 16, 1985, at the last meeting of August 26, 1985. He further stated that the Union had ''no concrete notice'' prior to that time. He asserted that prior to August 26 there had been confusion among even the supervisors as to when each economic proposal was effective.

Quinones went on to ''one more time'' invite the Hospital to bargain in good faith and to make ''adequate movements to further negotiations.'' He stated:

> We are hereby formally requesting you to reinstate all those working conditions of the previous collective bargaining agreement that have been changed and lastly, we are requesting you to comply with the request that we made at the last, at the next to last letter where we asked the employer that we begin the negotiations on a series of articles we had begun to negotiate which were half way negotiated, half way agreed upon and

> which the employer unilaterally decided not to continue negotiations over them to continue bargaining over them and lastly, that we begin the signing of a series of articles, sections or provisions, which were agreed upon in principle and which were pending on being initialled or signed by the bargaining committees.
>
> Last, we brought up our willingness to continue negotiating this collective bargaining agreement, we brought up our willingness to go one by one over the demands raised in the same manner as the bargaining process began, which began by article No. 1 . . . . and logically that all those noneconomic provisions would start being discussed to continue later on with the non-economic-economic provisions. That as we said before, the economic provisions would be discussed at the end, but that however, if there are noneconomic provisions in which we do not reach an agreement, these non-economic provisions were not going to be an obstacle for the negotiations of the economic aspect because *as we said before we were willing to continue discussing those noneconomic provisions not agreed upon jointly with the economic provisions of the collective bargaining agreement*. We have finished our requirement, I believe that with that statement which I bring forward to you, I have discharged my responsibility with regard to this bargaining process.

Thus this statement on its face would arguably seem to indicate a departure from the Union's past insistence to negotiate to agreement all noneconomic matters before discussing economic issues. But his subsequent statements proved this not to be so.

Vega again denied any prior agreement to first negotiate exclusively noneconomic matters. He accurately recited the past negotiation positions of the parties, the production of Gonzalez, and the Union's refusal to discuss economic issues. He therefore concluded that an impasse had occurred as of the receipt of the April 29 letter (admitted by Quinones to have been received on May 2).

Vega expressed surprise that Quinones should claim first notice of any implementation of the economic proposal at the last meeting because of the clear language of the letter and Aldarondo's explicit verbal notice at the May 9 meeting. Vega insisted that impasse still existed if the Union still refused to discuss economic issues.

Quinones then demanded restoration of certain benefit reductions. Vega responded by asking him whether that meant he was now willing to start negotiating the economic issues. Quinones answered:

> No, no, no, what we are requesting because we understood that the negotiation of the economic aspects have nothing to do with now and by the way, I am going to take this opportunity to reply we did not answer, we did not hear the report of [Gonzalez] for two reasons: First, because at that time the economic aspect of the collective bargaining agreement was not being discussed and if the economic aspect of the collective bargaining agreement was not being discussed, the Union did not have any reason to allow to be badgered with the old boring story about an economic statement, the one which is going around and the second reason is because the Union usually does not accept that type of procedures, that is, you do not have unilaterally the authority of saying how the Union is going to deal with and examine the economic data that you have to give to the Union, see: What we *generally* do is to hire an economist or accountant who examines thoroughly the Financial Statement given by the Hospital, who goes on to examine all those indicators that may allow us to understand and clear up for us about the real economic condition of the Hospital. That is how we resolve things and we agreed to that with the employer according to what the law sets forth. The employer did not have nor it has the authority to put into effect a final offer because the Union may not have agreed to listen to this harping on of your economist or your comptroller and that attitude, that attitude of yours, that appreciation in essence is illegal, see. In essence it is illegal.

The parties then went on to argue whether there had been an early agreement to defer economic negotiations after noneconomic agreement. Vega again offered to discuss both jointly, and Quinones, despite his foregoing statement of intent, refused and insisted on negotiating noneconomics first. They both agreed to schedule another meeting. Quinones accused the Hospital of forcing an ''artificial'' impasse to justify economic reductions. Quinones offered to negotiate 2 days a week. Vega asked again, several times, if he would negotiate jointly economic and noneconomic matters. Quinones refused. He stated: ''I told you already, write it in big letters, we are not in agreement to discuss that, because that was not the agreement.'' Quinones insisted that there was no impasse and accused the Hospital of treating him ''like a fool.'' Vega offered to meet at Quinones ''disposal'' when and if he would agree to negotiate economic and noneconomic matters jointly. Quinones refused and insisted on his prior position, i.e., there would be no negotiations of economic matters until after noneconomic matters had been negotiated, i.e., as he testified at trial, agreed on and ''signed.''

On September 27, 1985, the Union filed the charge in Case 24–CA–5235 which alleged an unlawful implementation of the Hospital's last economic offer on May 16, 1985.

d. *October 4, 1985—Meeting 12*

This meeting, as well as meetings on October 8 and 18, November 1 and 14, and December 18, 1985, was not tape recorded. I therefore rely on the uncontradicted testimony of Pou and his bargaining notes, as does the General Counsel. In order to get negotiations moving, the Hospital agreed to meet and discuss again noneconomic issues, i.e., grievance procedure of which there was some agreement. The parties also initialed certain noneconomic clauses The Union remained adamant that no economic issues be discussed. Thus, although the Hospital in effect offered to reopen the door to negotiate economic issues despite its implementation of its economic proposal, the Union refused.

e. *October 8, 1985—Meeting 13*

The parties discussed and agreed to certain language regarding the articles on union stewards. They also discussed, without agreement, the recognition, unit description, and management-rights clauses. They agreed to discuss the grievance and arbitration procedure at the next meeting.

f. *October 18, 1985—Meeting 14*

The last tape recorded meeting in 1985 between the parties was held on October 18. Meetings were held in 1985 on November 1 and 14 and December 18. The parties met together in the presence of Mediator Gerald on October 18. Times are not disclosed, but there is but a brief transcript of 29 pages in 2 segments.

The meeting in one segment started when Quinones offered to withdraw the charge in Case 24–CA–5235 if Cordero were reassigned to the delivery room, i.e., under an alleged new practice of transferring nurses from specialized areas to nonspecialized areas. He also now offered to directly negotiate economic CBA articles and to withdraw unfair labor practice charges of bad-faith bargaining against the Hospital, but on condition that the Hospital prepare to ''put on the table'' the preexisting fringe benefits pursuant to an NLRB-approved settlement agreement.

At this point, Hospital negotiators left the room to caucus separately. Thereafter, Quinones told the mediator that it would bargain about the subject of salaries if the fringe benefit status quo is restored. Vega countered with a proposal for a CBA with immediate reduction in benefits and with provision for a special committee to review salaries (apparently a wage reopener clause).

Quinones strenuously stated the union opposition to a CBA without immediate salary increases. He stated in an apparent reference to unit members: ''I prefer they all die rather than go to hell.'' He reiterated his prior demand for salary and fringe benefit increases. He proposed to adjourn rather than to discuss any proposed reductions. He insisted that such raises were possible by distributing the wealth of the Association.

Vega reiterated the claim of Hospital impoverishment and his willingness to disclose its financial statements and its last audit. He made no representations as to the financial status of the Association nor its ability to fund increased wages and benefits for the nurses.

Quinones responded by saying ''we are not fools'' and that the Hospital was ''economically well.'' He claimed that because the great majority of nurses had quit their jobs, the Hospital now had many more working at the low base salary of $650 and therefore the financial statement was not truly representative of the Hospital's economic situation.

Vega offered to discuss the Hospital finances at a special meeting with Gonzalez and Quinones. Quinones responded: ''forget it.'' Vega offered to produce someone else for the Hospital but got the same response. Quinones named another health care institution that had declared bankruptcy but nevertheless planned to increase nurses' salaries for each of 3 years. Cordero stated that even Hospital bodyguards were paid an $800 monthly salary.

The next part of the transcript is derived from side B of a tape recording. It is not clear whether this segment preceded or followed the foregoing segment. It started in the middle of a discussion of grievance procedure. Thereafter, there was a discussion of other noneconomic areas, including number of stewards, arbitration procedure, and finally the discussion of the issue of transferring nurses which I conclude gave rise to Cordero's transfer discussed above. Accordingly, I conclude that this brief discussion of noneconomic issues preceded the foregoing recorded segment.

g. *November 1 and 14 and December 18, 1985—Meetings 15 to 17*

Although the Union and Respondent addressed themselves to economic issues, there was no progress. The Union insisted on restoration of the reduced accruals in all fringe benefits, i.e., a recission of what it had insisted was an unlawful implementation, as well as increases in salaries and benefits as previously demanded. On November 1, Quinones refused to discuss as a quid pro quo package a management-rights proviso and union shop. The Respondent insisted that it had acted on a lawful impasse, refused to rescind the May–June benefit accrual changes and insisted on negotiating on that premise. At that meeting, he asked for a list of nurses identified by seniority and salary status.

On November 18, 1985, Quinones wrote a letter to Pou which accused the Hospital of bad faith and carrying out unlawful unilateral actions and notifying the Hospital of an intention to picket on November 26, 1985. Also by letter dated November 8 to Pou, Quinones requested Hospital financial statements or trial balances for a recent 1985 month, the current payroll list of unit members with their salaries and addresses and a reminder of a past failure to produce same.

At the November 14 meeting, Vega reminded Quinones of his refusal to listen to Gonzalez' proffered explanation of Hospital finances and accused Quinones of not offering a reasonable alternative to break the impasse. Quinones gave the same explanation as he had persistently given in the past, i.e., they had not been discussing economic issues at that time.[11] He again insisted that the Hospital's financial situation is ''good'' and he demanded salary increases, no benefits reductions whatsoever and a 5-percent Christmas bonus.

On November 15, 1985, Pou responded with a letter purportedly conveying a seniority list with employee names, wages, and addresses. His letter stated that because of an ongoing current audit, the final financial report was not immediately available but would be sent soon. By letter dated November 20, Quinones reiterated his request for 1985 Hospital financial information, noting a lapsed 120 days since the last audit. By letter dated November 21, Quinones requested the 1983 Hospital financial statement which Pou forwarded on November 27. By letter dated December 2, Pou wrote a letter purportedly sending the 1985 information. Thus we have the first actual request by the Union for any financial information of any kind, i.e., what had been previously tendered but rejected. Hospital financial information correspondence continued between Pou and Quinones regarding information requests through November.

The year ended with an early December exchange of letters between Vega and Quinones over Quinones' accusations that Vega was not responding to his telephone messages. Quinones asked to resume negotiations. Vega, by written response, denied the accusation and agreed to meet at a mutually convenient time.

The very brief December 18 meeting opened by Quinones asking ''What's up'' and Vega responding, ''We must discuss economics.'' Quinones, however, insisted again on refusing to accept any of the implemented fringe benefit reduc-

[11] Quinones phrased his rejection of Gonzalez' proffered explanation as spraying ''Flit'' on him. Quinones testified that this was a Puerto Rican colloquialism, i.e., to spray ''Flit,'' an insecticide, which, according to him, means to refuse to deal with something.

tions and insisted on salary increases. The meeting ended when Quinones announced that if Vega wanted to negotiate, he could call Quinones.

No further pretrial and presubpoena enforcement bargaining meetings were held again until April 11, 1986, and thereafter on June 24, August 5 and 11, 1986; October 2, 1986; and March 16, 1987. Only the June and August 1986 meetings were tape recorded. These meetings were preceded by early 1986 correspondence relative to requests for information. The General Counsel argues that as early as the November 14 meeting, the Union was ''waiting for the economic information to be in a position to make an intelligent assessment of Respondents' claims of an economic inability to pay or meet [the Union's] demands,'' inasmuch as he argues that ''several requests for information'' were pending as of November 14. As noted above however, Quinones did not describe the Union's position at that meeting as one which was contingent on requested verifying information. Rather, the Union had insisted as condition precedent to economic negotiation that the 1985 reductions in accrued fringe benefits be rescinded, insisted on a salary increase, refused to listen to the Hospital's proffered verbal explanations of its finances and insisted, in absolutist terms, that the Hospital was in good financial shape. At no time did the Union explicitly state that it might modify its position after scrutiny of financial information at those late 1985 meetings.

Late 1985 and 1986 correspondence and those 1986–1987 meetings will be evaluated hereafter with respect to complaint allegations relative to the issue of a bad-faith bargaining in the form of a refusal to provide requested information and other unilateral changes, including wage increases in 1986 and 1992. It is sufficient to note at this point that Gonzalez became more active in negotiations and some discussion of the Hospital's financial situation took place, and that the Union's financial consultant, Pedro W. Tirado (hired in October), also became involved and that the parties' relative positions remained the same. No request for information as to dealings between the Hospital and the Association were made until late 1986, and no requests of the Association for information of certain of its dealings with the Hospital or of its own financial situation were made until February 1987, after the first adjournment in this proceeding.

5. Analysis of 1985 bargaining allegations

a. *Timeliness of charge—Section 10(b)—Case 24–CA–5275*

As already discussed, the timeliness issue must be resolved by a determination as to whether the statutory 6-month limitation period is to be calculated as running from the date of notice to the Union of a clear and unequivocal intention to effectuate the reduced accrual rates of fringe benefits which I find occurred on May 2 and again on May 9, 1985, the date of stated implementation therein, i.e., May 16, the date of the actual bookkeeping accrual changes on June 1, 1985, or the dates of actual perceived impact by the employees, i.e., a variety of specified and unspecified dates thereafter when employees attempted to claim their expired contractual fringe benefits.

Respondents rely on authority which is relevant to situations where adverse employment decisions are communicated to employees as in the termination of employment contracts, job terminations or discrimination wherein the calculation starts from date of notice and not date of impact, e.g., *Postal Service Marina Center*, 271 NLRB 397 (1984). The General Counsel does not dispute that the April 29 letter nor the statements of notification themselves, which I found above were reiterated at the May 9 meeting, are clear, unambiguous, and final. See *Chinese American Planning Council*, 307 NLRB 410 (1992). The General Counsel however argues that the applicable date for commencement of the limitation time period should be from the date of implementation, i.e., June 1, 1985. He cites, inter alia, *United States Can Co.*, 305 NLRB 1127, 1144 (1992), enfd. 984 F.2d 864 (7th Cir. 1993); and *Howard Electrical & Mechanical*, 293 NLRB 472, 475 (1989). The former case did not raise a defense of claimed impasse, where the latter did in part.

The General Counsel's analysis comports more with the Board's current limitation of the *Postal Service Marina Center* case to discharge allegations. In *Leach Corp.*, 312 NLRB 990 (1993), the issue involved an unlawful withdrawal of recognition from a union and compliance with an existing CBA on the transfer of unit employees to another nonunion plant. The Board calculated the limitation period not from the date of the employer's stated intention to abandon its ongoing contract obligation with a union at the other plant, but rather on the earliest date during a gradual transferring of unit employees when the union had a clear and unequivocal notice that the transfer had been ''substantially completed.'' The Board rejected the employer's reliance on the *Postal Service Marina Center* case because it stated that case involved a discriminatory discharge and not a ''contract repudiation and refusal to bargain.'' It cited *United States Can Co.*, supra, and *Howard Electrical & Mechanical*, supra.

I agree then with the General Counsel that the critical date is the date of implementation. The problem lies with the definition of implementation. Is it the date when something palpable was done, i.e., actual accrual computation on June 1, or was it the deadline date of May 16, given in a claim of impasse after which no further discussion would be entertained with respect to the economic proposals. In the *Howard* case, the judge found that the limitation period had been triggered not by the implementation date but the date of the employer's purported ''unprivileged and invalid'' impasse. The Board rejected the judge's conclusion that whether a valid impasse occurred was a critical issue. The Board found that such analysis was not appropriate because a unilateral change imposed therein involved the scope of the unit, a subject which could not be bargained to impasse. In this case, the Hospital claimed impasse and implemented only the fringe benefit economic proposals.

The Board stated further in *Howard*, supra at 475:

> Second, the judge erroneously dated the actual implementation from the Respondent's announcement of an intent to implement. Notice of an intent to commit an unlawful unilateral implementation, however, does not trigger the 10(b) period with respect to the unlawful act itself. *American Distributing Co. v. NLRB*, 715 F.2d 446, 452 (9th Cir. 1983), enfg. 264 NLRB 1413 (1982) [footnote omitted]. The judge acknowledged that the first indication that the Respondent was implementing terms of its December proposals came when the Respondent began the hiring of pre-apprentices in April

> and May. In fact, had other terms which the Respondent proposed in December been implemented, such as the manner in which benefit contributions were made, the Unions might have been on notice that the implementation had occurred. Accordingly, we find that the actionable, alleged unfair labor practice occurred here when the pre-apprentice proposals were implemented in April and May and that the 10(b) period did not start running until that time.

The *United States Can Co*. case, supra, involved, inter alia, the issue of whether an obligated successor employer unlawfully rejected a predecessor's assumed multiplant bargaining obligation and multiplant agreement as of a certain date, when it insisted to impasse on single plant bargaining. The employer argued that the limitations period ran from date of repudiation of multiplant bargaining notice to the Union, citing *Postal Service Marina Center*, supra. The judge, whose decision the Board adopted, rejected that precedent, citing the *Howard* case and *Esmark v. NLRB*, 887 F.2d 739, 746 (7th Cir. 1989), where the limitation period was found to run from the actual closure of plants and not the date when the announcement of intended closure has made. The judge went on to evaluate Board precedent which analyzed and distinguished the continuing violations rationale not applicable to multiple refusals to execute a collective-bargaining agreement as in *Chambersburg County Markets*, 293 NLRB 387 (1989), cited by the employer, and the periodic, sequential, subsequent breaches of ongoing contract obligations which are violations in and of themselves as in *Farmingdale Iron Works*, 294 NLRB 98, 99 (1980), enfd. mem. 661 F.2d 910 (2d Cir. 1981). The judge rejected the employer's argument that the repudiation of the master agreement could not constitute the beginning of the limitation period because Respondent thereafter, by its conduct, ''re-adopted and reviewed the master agreement throughout and beyond the 10(b) period.'' By doing so, she distinguished the facts in *Black Diamond Mining Co.*, 298 NLRB 775 (1990), from those before her. She noted that in *Black Diamond*, the employer, after unequivocal notice of rejection of the parties' contractual grievance-arbitration procedures in the recently expired CBA, engaged in no conduct thereafter inconsistent with its announcement of repudiation. The judge then dealt with the employer's insistence to impasse on single plant bargaining as of a certain date, which she found triggered the 10(b) limitation period. She found that negotiations prior to that date had not met the criteria of impasse as defined by the Board in *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), enfd. 395 F.2d 622 (D.C. Cir. 1968). On the date on which she found impasse, the judge quoted the decision in *Television Artists AFTRA v. NLRB*, 395 F.2d 622 (D.C. Cir. 1968), to the effect, ''there was not realistic possibility that continuation of discussion at that time would have been fruitful.''

The *Black Diamond* case discussed by the judge in the *American Can* case involved a factual situation roughly comparable to that in this case, i.e., there was an announced change in terms of employment set forth in a recently expired collective-bargaining agreement. Here, it was fringe benefits; there, it was the grievance-arbitration procedure. The employer there did not refuse to negotiate grievances after contract expiration, rather it refused to abide by expired contracts procedures. The Board calculated the limitation period from the announcement of repudiation, not from the first incident thereafter when grievances were next processed, i.e., a date within the limitation period.

In this case, the notification was clear and unequivocal, and the Hospital did nothing inconsistent with its announcement of effectuation thereafter. The Union, in September 1985 when it filed its charge, considered the effectuation date to have been May 16, 1985, i.e., the point in time after which the new benefits accrual calculations would follow the new formulae. It withdrew that charge and filed no other charge until more than 6 months of what it had accepted was the effectuation date, which was announced at and extricably entwined with alleged unlawful declaration of impasse by the Hospital conveyed to the Union on May 2 and May 9, 1985. Indeed, it is the Union's position and the General Counsel's that the Respondents had unlawfully declared impasse and unlawfully insisted on negotiating economic issues and forcing ''artificial impasse'' before and on May 2 and May 9.

Despite the fact that the first actual accrual of diminished fringe benefits occurred on June 1, 1992, and thereafter, the facts of this case give some cogency for concluding that the limitation period commenced on May 16, which was recognized by the Union in its withdrawn charge. The Union had its opportunity, timely seized it but then abandoned it. Under such circumstances, it might by argued, why should it be permitted to resurrect litigation of conduct which its own perceptions held to be committed beyond the limitation period? Finally, it might be argued that the limitation period ought to run from the alleged unlawful conduct to which it is essentially related and dependent on, i.e., the declaration of impasse prior to May 16, 1985.

I find that because of this essential relationship to the impasse issue and my findings below that a valid impasse had occurred prior to May 16, 1985, it is unnecessary to make a definitive determination as to the timeliness of the charge. For reasons set forth below, I conclude that the Hospital engaged in no bad-faith bargaining prior to May 16 or thereafter in 1985 and did not bargain to impasse over outrageous regressive noneconomic demands or nonmandatory bargaining subjects, but rather declared valid impasse over the order of negotiating and lawfully implemented its recessionary fringe benefit bargaining proposals.

b. *The merits of bad-faith bargaining, misrepresentation, invalid impasse allegation*

The foregoing findings of fact should make apparent the necessary consequential conclusions of law. There is no credible factual basis for the allegation of tardiness or any other implicit allegation of Respondents' dilatoriness, and no evidence that any such perceived conduct impacted negotiations with respect to impasse.

There is no credible factual basis for the multiple allegations in the complaint to the effect that the Hospital either bargained to impasse or adamantly insisted on any of the regressive noneconomic demands of its first proposal, nor did it do so with respect to the scope of the unit or unit composition.

The General Counsel concedes that he has the burden of proving that the Respondent made such harsh proposals as elimination of checkoff for the purpose of frustrating negotiations, citing *American Thread Co.*, 274 NLRB 1112

(1985). He argues, however, that an adherence to elimination of a union-security clause must be shown by Respondent Hospital to be reasonable under ''all the circumstances,'' citing *Cook Bros.*, 288 NLRB 387, 389 (1988). He also argues that all bargaining positions on mandatory subjects must reflect a legitimate business purpose, citing *NLRB v. J. P. Stevens & Co.*, 538 F.2d 1152 (5th Cir. 1976); *NLRB v. A. 1. King Size Sandwiches*, 732 F.2d 872 (11th Cir. 1984); and *Langston Cos.*, 304 NLRB 1022, 1050 (1991). The General Counsel argues that the facts here demonstrate that the Hospital had no reasonable motivation for the regressive noneconomic proposals but it rather was motivated by a desire to force an artificial impasse by means of a carefully engineered plan to destroy the Union and economically exploit the nurses.

I agree that if an employer adamantly insisted on such regressive proposals without giving reasonable explanations for them, it would certainly appear to have evidenced an intention to frustrate contractual agreement and/or to seek the erosion of the union's representational status. The problem with the General Counsel's argument is that in 1985, the Union never gave the Hospital the opportunity to engage in such a bargaining stratagem. If the Hospital even had entertained such prebargaining intent, the Union's bargaining conduct precluded its implementation. The Union's own conduct at the bargaining table made irrelevant any possible evidence of such predisposition. The good- or bad-faith intentions of Respondent's proposals were never put to the test.

The Hospital repeatedly assured the Union that all of its proposals were negotiable. It explicitly suggested a possible quid pro quo for some of these proposals in return for a management-rights proviso to which the Union said it was amenable, or for economic concessions which the Union adamantly opposed. The Hospital even suggested a quid pro quo for payment of union employee negotiators which was rejected out of hand by the Union as a ''non negotiable'' item.

Clearly, the Respondent's bargaining posture on the regressive noneconomic proposals constituted a signal that it intended to use them as leverage to induce economic concessions, or at least the discussion of such concessions.

In *J. P. Stevens*, supra, the court concluded that resistance to checkoff was a legitimate tactic to minimize pressure for a wage increase. The *Langston* case, supra, involved a finding of a sealed philosophical mindset against union security, evidence of which is lacking here. In the *Cook* case, supra, the Board found adherence to deletion of union security not to be in bad faith because the General Counsel failed to prove that the employer was disingenuous or unwilling to discuss it, as is not the case here.

Another case cited by the General Counsel is *A.M.F. Bowling Co.*, 303 NLRB 167 (1991). In that case at page 171, the Board addressed the issue of the employer's proposed elimination of the expired collective-bargaining agreement restriction on use of nonunit employees to perform unit work. The judge concluded that the employer had unlawfully bargained to impasse over that proposal and, in so doing, attempted to alter the unit description, citing *Standard Register Co.*, 288 NLRB 1409, 1410 (1977). He failed however to make a specific finding of an 8(a)(5) violation to conduct to which the General Counsel excepted. The Board found that the employer did not seek to change the unit description language nor to delete job classifications nor job positions, but it rather sought the right to control the assignment of unit work at its facility, and the facts were thus distinguishable from *Standard Register*, where the employer there bargained to impasse over the issue. The Board held that the removal of work by contracting out or transferring is a mandatory subject and if an employer bargained to impasse over it, it was lawful. Respondent's conduct here is akin to that involved in *A.M.F. Bowling*, not *Standard Register*, but, in any event, there had been no fixed adamancy nor bargaining to impasse over it. At most, on some issues, the Hospital said that at that stage of the negotiation, i.e., not yet discussing economics, it was ''firm.''

The Respondent continually reiterated the negotiability of the unit description, part-time employees, restrictions on use of nonunit employees to unit work, and all other noneconomic proposals. Some of those proposals may have been provocative and even frivolous, e.g., the elimination of traditional but clearly ceremonial recognition language. Others, while an apparent threat to the Union's representation status, were explained and considered by the Union, e.g., whether the Union actually needed all the stewards provided by the old CBA. Some proposals were seriously considered by the Union, e.g., a management-rights proposal. Some were desired by both parties, e.g., a change in grievance-arbitration procedure. They were all proffered to the Union as negotiable in the context of an overall contractual negotiation of economic and noneconomic contract articles.

The General Counsel argues that it was the Hospital which adamantly insisted on its own priority of bargaining, i.e., economics first, and demanded surrender by the Union on all fronts as a condition for contractual agreement. This is not so. The Hospital initially expressed a need and urgency to negotiate economics as soon as possible because it needed concessions. The Union refused. The parties then reviewed both proposals concurrently article by article, until they came to the economic article. They had up to then deferred what they could not agree on, none of which was termed nonnegotiable by Respondent. When they finally came to the economic article, the Union refused to negotiate or even discuss it and insisted falsely that there had been prior agreement to negotiate and agree on all noneconomic articles first. The Union's strategy was transparent. It knew that and expressed that it would never agree on any kind of economic concession and that any economic negotiation would result in an impasse which would allow Respondent to implement concessions. By stalling negotiations until after agreement on economics, it thus deferred possible economic reductions. Instead, it seized on the Hospital's regressive noneconomic proposals, which it termed a death threat which, from its viewpoint, necessitated fragmented, isolated negotiation. It thus wanted the Hospital to desist from regressive threats and to abandon its leverage for concession before any talk of economic issues would be permitted. The Union ignored the Hospital's offer of joint issue negotiation and possible quid pro quo of some noneconomic proposals. It rejected out of hand any proffered proof of Hospital operations' financial distress. The most it responded was a terse statement of a fixed adamancy to any economic concessions because it had its own source of information as to the well being of the Hospital, the relationship of the Respondents and the financial reserves of the Association, which it perceived was accessible to the Hospital. Having announced this conclusion,

the Union refused to discuss further the proposed economic articles until agreement had been reached upon all noneconomic matters.

Contrary to the General Counsel's assertions, the Union asked for no proof of the Hospital's financial condition until well after declared impasse, i.e., November 1985. At no time in 1985 did it ask for information relating to the financial condition of the Association nor the relationship between Respondents. Indeed, the Union insisted that it had its own conclusive information which it would disclose in due course after noneconomic agreement.

Although the Union claimed to have this conclusive proof in its possession, it never produced it and rejected requests to do so. The General Counsel argues that the Union negotiators were inadequately equipped to evaluate any financial data and were denied the opportunity to intelligently do so. The facts show that despite the Union's claim to have dispositive information, it did also refer to a need to hire an analyst. But the Union rejected the proffered opportunity to do so and insisted that if and when it would do so, it would be after noneconomic agreement was readied. Thus the analyst was hired in October 1985. I reject Quinones' testimony of an earlier lengthy months-long ''process'' of hiring as too vague and generalized to be credible.

There was no refusal of union requests for information of a financial nature by the Hospital of its own finances nor of the Association's finances nor of the relationship with the Association in those 1985 negotiations. The Hospital did not deny the Union's accusations of the Association relationship nor did it deny accusations of Association wealth. It had no opportunity to make any explanation about it nor justification for the Association relationship because the Union refused to discuss economic issues singly or jointly.

The Hospital thus was not only put to the test of its good or bad faith as to noneconomic regressive proposals, but it was similarly not put to the test as to its economic proposals of which there is ample undisputed evidence of economic motivation, i.e., operational losses of the Hospital and, indeed, the Association itself in the period leading up to the formulation of the Hospital's proposals.

The General Counsel argued that the relationship between Respondents hid the true financial status of the Hospital from the Union. He fails to explain the Union's apparent awareness of the relationship as claimed by it in negotiations. The General Counsel appears to argue that the Respondents entered negotiations with a fixed mindset to exploit the nurses to the financial advantage of the teachers and to accomplish this by fraudulently claiming Hospital poverty. The evidence disclosed no new scheme in 1985 to destroy the Union, exploit the nurses, or suddenly to shift or disguise sources of income. What was done in 1985 is what was done throughout the parties' collective-bargaining relationship. The Hospital was created by the Association to provide cutrate hospital medical care for the teachers. There was nothing new nor secretive about their relationship in 1985 that did not exist before. Under that relationship solely, benefits and increases thereto had been negotiated, all while the teachers enjoyed cheaper hospitalization. By 1985, however, what happened was not a sudden decision to further enrich the Teachers Association by imposing concession on the nurses, for which there was no economic motivation other than increased greed. What happened was that the Hospital operations suffered undisputed economic losses, e.g., prospective Medicare reductions, increased costs, diminishing bed occupancy, the need for capital investment, and all at a time of increasing and continuing deficits. The General Counsel's only rejoinder to that evidence is to argue that though suffering its own deficits, the Association could have increased its payment to the Hospital for services rendered and thus enabled the Hospital to avoid impoverishment.

The evidence reveals that the Association, in light of its own financial problems, decided that its contributions to the Hospital operation would not be increased in order that the Association could retain its historical medical care advantage for the teachers. Thus the Hospital was forced to negotiate within the boundaries and limits of past negotiation, i.e., the parameters set on it by the Association with respect to its operational costs, including necessarily below cost service to the Association. It is not the purpose of this litigation to adjudicate the propriety of that economic motivation as to whether the Hospital and/or Association was sufficiently generous in the circumstances they found themselves. Rather, it was the Union's recourse to demand information and the Hospital's obligation, having claimed poverty, to supply requested information to substantiate the necessity of the reductions it sought. *Reichhold Chemicals*, 288 NLRB 69 (1988), enfd. in part 906 F.2d 719 (D.C. Cir. 1990); *A.M.F. Bowling*, supra at 169. Prior to November 1985, the Union asked for no such information. Nor did it ask for any information at all in 1985 regarding the Respondent's relationship or the Association's finances.

The General Counsel's assertion that the Respondents entered negotiations with a fixed intent and closed mind with respect to a wage freeze and all fringe benefits' reductions proposed is like his similar argument with respect to the Hospital's noneconomic proposals, a matter of pure conjecture because of the Union's insistence on the fragmentation of negotiations which precluded all but the briefest and most adamant union statements of position on the economic issues. To suggest that the Hospital ''fragmented'' negotiations by insisting on a discussion of economic issues jointly or singly with economic issues is a gross and self-evident distortion of that word. The Hospital sought to integrate, not to fragment, negotiations. The Hospital wanted to negotiate all issues so that there might be a give and take between noneconomic and noneconomic issues. The General Counsel cites no authority for the proposition that an employer may not even propose noneconomic ''take backs'' in order to obtain leverage for its real goals of economic concessions. In the period preceding the alleged invalid impasse and implementation of proposed reduced benefits, there was no opportunity for the Hospital to have engaged in bargaining conduct by which we might have evaluated the degree of closure of its mindset as to economic or noneconomic issues because of the Union's insistence on fragmenting the order of negotiations, i.e., negotiation and agreement of noneconomic CBA articles first.

The General Counsel alludes to subsequent more recent conduct by Respondents. But in a case cited by the General Counsel for other purposes, it was held that evidence of postimplementation conduct may not be relied on to evaluate preimpasse conduct. *Storer Communications*, 294 NLRB 1056, 1083 (1983). In any event, there was no change in the Union's position in the order of negotiations until the end of 1985.

I conclude that it was the Union's own bargaining conduct, which insisted on the fragmented or piece-meal bargaining, that led to an impasse as to the order of negotiations on and after April 29, 1985, and well through the end of 1985.

The Board has held that when an employer had taken an unyielding position that certain subjects be settled before discussing other areas, it evidenced its bad faith. *Patrick & Co.*, 248 NLRB 390, 393 (1980). Thus a health care institution was found to have exhibited bad faith and hindered contractual agreement by adamantly insisting on fragmented bargaining in which it refused to discuss economic issues until after agreement of all other issues. *Trumbull Memorial Hospital*, 288 NLRB 1429, 1447 (1988). See also *E. I. DuPont & Co.*, 304 NLRB 792 fn. 1 (1991). Compare also *Jefferson Smurfit Corp*., 311 NLRB 41, 57 (1993). As was explained in *Louisiana Dock Co.*, 293 NLRB 233 (1989), reversed in part 909 F.2d 281 (7th Cir. 1990), a ''Union cannot be heard to protest [an employer's] unilateral actions [where] it was the Union's own acts which foreclosed effective negotiations.''

I conclude that the parties were deadlocked as to the order of negotiations in April and thereafter to the end of 1985 because of the Union's implacable and unabating insistence on a fragmented, isolated order of negotiations and, accordingly, a valid impasse had occurred on which the Hospital was privileged to implement concessionary economic proposals with respect to the fringe benefits as alleged in the complaint. I find that the Hospital reasonably concluded that there was ''no realistic possibility that continuation of discussion at that time would be fruitful.'' *Television Artists AFTRA v. NLRB*, 395 F.2d 622 (D.C. Cir. 1968). Accordingly, I find all allegations in Case 24–CA–5275 relative to the course of bargaining involving the implementation and alleged bad-faith bargaining through fall 1992 to be without merit.

I find no merit to the General Counsel's argument that there could have been no impasse because the Union and Hospital had executed an understanding on March 20, 1985, to submit ''agreements negotiated'' to the union membership for ratification, and there had been no ratification vote submission of Respondent's last offer. The case cited by the General Counsel, *Storer Communications*, 294 NLRB 1056, 1082 (1989), for this proposition is factually distinguishable. There, the union committee had no authority to agree on a CBA and the employer had asked for presentation of its last offer to a ratification vote, but they implemented its offer prior to the ratification vote, knowing it had not yet occurred. It is quite clear that the parties had reached no ''agreement'' in the sense referred to it in their ratification agreement, i.e., a single final CBA. In any event, it was clear that the union negotiators were not about to submit to a ratification vote an unagreed-on segment of a proposed contract containing those proposals which it adamantly refused to even discuss or consider.

The issues of information requests of November 1985 and thereafter and the issue of union access and subsequent unilateral changes in access and salary will be treated separately below as they had no conceivable causal relationship to the impasse issue.

D. *Union Access Issues*

1. Case 24–CA–5213—August 8, 1985

The expired CBA provided, in part, as follows in article XXV, paragraph I:

> The officers of the Unidad Laboral may visit the different departments of the hospital when they deem it necessary during day time and night time hours to verify the compliance of the agreement or to deal with hospital representatives in matters related with the Union members, having duly notified in advance about the visit to the corresponding hospital officer. These visits will be conducted in a manner which will not interfere with the performance of the work.

The complaint in Case 24–CA–5213 alleged that a unilateral change in the terms and conditions of employment so constituted by that proviso was effectuated by Respondent on August 8, 1985, when the Hospital refused access to its facility contrary to the terms of that expired article. The Respondent asserts that its conduct on August 8 was in full compliance with that article and that the Union's subsequent conduct in gaining access caused the Hospital to propose a change in the terms and conditions of access, which led to the subsequent September incident alleged hereafter as another unilateral union access rule, policy change. Respondents do not dispute that union access is a mandatory bargaining subject. Moreover, the obligation to bargain about changes in terms and conditions of employment created by the expired CBA union access article survives the contract expiration. *Fabric Warehouse*, 294 NLRB 189 (1989).

The Respondent perceives the General Counsel's theory to be that the expired agreement did not require notice. The General Counsel, however, argues that the testimony establishes that prior practice did not require visiting union representatives to state the purpose of the visit, and that by deviating from that practice and placing restrictions on the attempted visit of Davila and Cruz to the nurses at their work stations, Respondent instituted a change in access rules unilaterally.

Cruz did not testify as to the access incident. The General Counsel relies entirely on the uncorroborated testimony of Davila, and the Respondent relies on that of Pou. It is admitted by Pou that at about 11:30 a.m. on August 8, he received a telephone call from Ramonita Cruz, the chief steward, wherein she asked for permission for her and Davila to visit the RNs at their work areas in the Hospital on that same day for the purpose proffered by her to introduce Davila to the union membership. Pou testified that he thought this was strange because Davila had been servicing the unit for some time and had made prior visits to the Hospital. He testified that he told her that and further told her that he would not permit it because it would constitute an unnecessary interruption of services for an invalid purpose but that he invited them both to visit him at his office to discuss the issue. He is uncontradicted by Cruz and therefore credited.

Pou testified that, later, both union representatives appeared at his office but now Davila stated a different purpose, i.e., to post announcements on the union bulletin board provided for the Union at the timeclock for an October meeting and to question the nurses at their duty stations as to whether they had any complaints or grievances. Pou testified

that he responded that such purpose would be even more disruptive and that, in any event, it was the stewards' function to process employee grievances. He told them that it made no sense but they were free to post the notice, which they did. Pou testified that under the expired CBA, the access ''policy'' had always been limited to legitimate union business purposes. He did not explain.

Davila testified that after the August 2, 1985 negotiation meeting, the access policy changed with respect to the requirement that a purpose must be stated. He testified in general terms with respect to his own actual past practice when, after telephone notification to the Hospital office the same day, he had visited without having to announce in advance the purpose of his visit. He testified that ''several times'' he visited nurses and the office personnel. He gave no details of whom he spoke to nor where, nor any other context. He was not contradicted but was neither corroborated as to his own experiences, i.e., since January 1985. There was no other evidence of actual past practice. With respect to the August 8 meeting, Davila's account however essentially is the same as Pou, except that he, Davila, insisted that it was part of his duties to visit the nurses in the facility. He also testified without effective contradiction that Pou followed him to the bulletin board and observed the posting, i.e., to make certain he did not visit with the nurses.

I credit Davila as to his own past practice, as it is somewhat more specific and certain than Pou. Further, it is more in accord with the breadth of the language in the expired CBA. In any event, Pou's restriction on the actual purpose of the visit, to exclude the outside union representatives' personal investigation of compliance with the CBA, which, by its terms and definitions includes possible grievances, clearly conflicts with the CBA language. Furthermore, I credit Davila's more certain testimony that he told Pou that he wanted to discuss with the nurses then-pending complaints and not merely to solicit grievances. Also, Pou later complained in testimony regarding Quinones that Quinones often appeared on the Hospital floor area without much advance notice. Pou's sudden departure from what the contract clearly permits leads me to credit Davila's testimony that Pou also stated in explanation to him that the CBA had expired, thus implying to Davila that he need not abide by its terms insofar as it encompasses the union visitation article. Pou testified that he had a similar belief as to the grievance procedures, i.e., that there was no obligation to bargain about their repudiation because they expired with the contract. That issue is not litigated in this case. Pou testified that he consulted Hospital legal counsel at the time of the episode. Perhaps that resulted in no subsequent assertion that visitation rights expired with the contract.

The Hospital's proposed CBA contained a union bulletin board and visitation rights provision in its proposed article XX. It states:

> The Officers of Unidad Laboral may visit the Hospital in order to discuss with Hospital Representatives matters related with the Agreement or to deal concerning matters in regard to complaints of the union members, having to notify their visit in advance to the Industrial Relations and Personnel Director of the Hospital, or in the event the latter is not available, to the Hospital Administrator. Said notification must be done during working hours and at least twelve (12) hours prior to the visit. Their visits shall be carried out in a manner which will not interfere with the normal development of the Hospital work of the employees covered by the Agreement nor with the services and tranquillity of the patients.

There were no further incidents of access limitation until that subsequently alleged in the complaint.

Pou testified that the restrictions he imposed on Davila were in compliance with the terms of the expired CBA, i.e., it would have been disruptive to permit Davila to meet with bargaining unit members at their duty stations. He failed to explain how the matter in which the visit was to be conducted would have been disruptive. Davila testified without contradiction that he proposed to visit the nurses during their lunch periods. He also gave no details nor did he explain why the employee dining room was inadequate.

2. Consolidated complaint, Cases 24–CA–5213 and 24–CA–5275—Unilateral union access changes October 1985—November 1985

On September 24, 1985, Quinones and a companion agent, Sara Valentin, visited the Hospital and with permission Quinones visited Chief Steward Cruz in the employee dining room. There is no allegation that he was compelled to state his purpose or that there were any other changes in the access procedure. There is a dispute as to what Pou and Quinones said to each other and whether Pou accompanied Quinones outside where Quinones allegedly distributed, at or near the facility entrance, literature which referred to the issuance of complaint in Case 23–CA–5213. The complaint alleges no violative conduct by the Hospital at that encounter. The General Counsel's position is that Pou was not present at the entrance and there is no allegation that the guard who allegedly interfered with Quinones and called a police officer was an agent of Respondent.

On September 25 and 27, Pou and Quinones exchanged letters containing different accusatory versions of the incident, e.g., whether and where Quinones or his companion, Sara Valentin, distributed the literature; whether Pou was present at the entrance and whether Quinones was treated differently from other bargaining units' representatives. The record contains merely Quinones' accusations to Pou but no actual evidence of discriminatory treatment. Quinones did not deny in his letter response or in testimony Pou's recitation of fact in his letter that Quinones called and stated the purpose of his visit. He also complained that Pou accompanied him on his visit to Cruz, which he characterized in his letter as a continuation of Pou's past practice, apparently during the life of the CBA.

On September 25, 1985, by Pou's letter of that date to Quinones, Respondent Hospital announced its intention of implementing the Hospital's proposed union visitation rules on October 4, i.e., the same article XX, paragraph G, as it had already proposed. Pou invited Quinones to bargain about it. Quinones' response letter accused the Hospital of discrimination against the Union which maintained a commitment to a good relationship. Quinones concluded as follows:

> We advance that it is the Hospital which has breached the commitment by unilaterally and in viola-

> tion of the National Labor Relations Act having changed paragraph G of article XX.
>
> In regard to the last paragraph, we want to advise you that our Union will always be willing to negotiate but that this letter in its totality constitutes another proof of the Employer's disposition to negotiate in bad faith and put in effect articles which undermine the Union which I insist is in violation of the Law.

There however was no specific reply to Pou's suggestion that they coordinate a meeting for that purpose, i.e., a time and date convenient to Quinones to negotiate the proposed access rules.

The parties held a negotiation meeting on October 4. Several matters previously agreed to in April were initialed, including those concerning article XXV (old CBA) which contained the visitation rules, but the Union did not raise the subject of the proposed implementation of the modified union access rule nor did it do so at any other time or in any other manner. It should be recalled that it was at the October 4 meeting when the Hospital yielded and agreed to again discuss noneconomic issues in the face of the Union's adamant position of bargaining order priority.

The complaint alleges that the Hospital unilaterally implemented the proposed change on October 4, 1985, without bargaining with the Union about the change or the effects of it and further applied the new policy on October 21, 1985, by denying access to a union representative.

Pou testified that he received no reply to his letter of September 25 offering negotiation. Pou further testified that the new access policy was implemented on October 4, the same date as the negotiating meeting. The General Counsel cites Pou's testimony for the assertion that the new policy was implemented on October 4 as a fait accompli prior to the negotiating meeting. Pou's testimony throughout, however, was not at all certain and many times he had to be referred to his affidavit as well as his bargaining notes and correspondence. Pou testified that on October 4 ''in fact, on that very day, it was already in effect.'' It however is not clear just how it was in effect and, if so, before or after the meeting. It is clear, however, that the Union did not raise the matter at the negotiation meeting nor did it respond to Pou's letter in the sense of answering the specific invitation to arrange a meeting at Quinones ''convenience'' for a ''specific time and date'' to discuss the proposed change. Viewed from that aspect, Quinones' vague response that the ''Union will always be willing to negotiate,'' clothed as it was in accusations of bad faith, could reasonably be interpreted as not a real response. The very words, ''always willing to negotiate,'' sound more like a declaration of general attitude. It is certainly not a demand to meet and bargain. Certainly, Quinones made no effort to set a time and date for such a meeting.

The General Counsel relies entirely on Pou's testimony to fix an ''implementation'' date of October 4. Yet, he ignores his own prior interpretation of ''implementation,'' i.e., the date when something next occurred to affect someone. The only evidence of such subsequent conduct involves an attempted entry by Davila on October 21. On that date, it is undisputed that Davila telephoned Pou to notify him of his intention to visit nurses on the floor that day to ''orient'' them, and to escort Cruz to her surgery recovery room duty station to protect her from harassment. Pou denied entry on the grounds that it did not comply with the new 12-hour advance notice rule.

Pou admitted that the purpose of the new access rule was to effectuate greater Hospital control over the timing, manner, and purpose of nonemployee, union representatives' access to the Hospital patient care working areas. He testified, without contradiction, of past disruptive visits to Quinones to distribute literature in the work areas at times when he had given little or no advance notice and which led to the filling of unfair labor practice charges against the Union. He also testified without contradiction that during the September 24 confrontation he reminded Quinones of those charges and the results. Quinones did not explicitly contradict Pou except to deny that a confrontation occurred with Pou on the outside of the Hospital. Prior to the October 21 incident, there is no evidence that the Union requested or the Hospital refused to negotiate the union access proposal or its effects, nor of any such request and refusal thereafter.

The consolidated complaint also alleges that on or about November 26, 1985, the Hospital applied the new union access policy by refusing a union representative access to nurses at their duty station and by restricting him to access to the personal offices. Quinones testified without contradiction that about November 1985, he received a complaint from RN Vicenty regarding her transfer from one work area to another at the Hospital. Quinones visited Pou at the Hospital and requested to see Vicenty at her work area. It is undisputed that Pou denied Quinones access to Vicenty's work area. Instead, Pou insisted that Quinones interview RN Vicenty in the personnel office. Quinones, having no other alternative, attempted to do so, but he testified that RN Vicenty was unable to be interviewed due to her nervousness and Pou's constant coming and going in and out of the personnel office while Quinones attempted to interview Vicenty. Despite the generality of Quinones' testimony, it was not contradicted by the testimony of Pou.

3. Case 24–CA–5310—January 24 and 27, 1986 access incidents

By hand-delivered letter dated January 23, 1986, Quinones notified Pou that the Union had received reports concerning the employment of per diem nurses in various departments and also complaints about nurses working overtime everyday in some departments and complaints regarding their overtime compensation. Therefore, he notified Pou that Davila would visit the Hospital at 1 p.m. November 24 to verify those work conditions, particularly where the ''team nursing concept'' is being utilized, i.e., an experimental pilot program. Quinones also asked Pou to supply Davila with any documentary information he might request on the matter. In a response letter of January 24, Pou denied awareness of ''any problems'' regarding the use of per diem nurses or overtime compensation and he welcomed Davila's visit at 1 p.m. The account of the visits thereafter testified to by Davila was uncontradicted. Davila was accompanied by Cruz. When they confronted Pou in his office, they were told they could not enter the Hospital patient care work area because Pou was unaware of any nurses' complaints. Pou offered to meet with them on January 27 to discuss the matter in depth.

On January 27, Davila, Cruz, and Quinones met with Pou in his personnel office and reiterated the announced purpose

of their visit. Quinones asked to visit the work area to observe the operation of the team nursing program ''to see what that was,'' that nurses had complained about the payment of sick leave and they wanted to speak to one particular nurse, Inez Reyes Conde, about her complaint concerning the employment of a per diem nurse.

Pou responded that they raised insufficient reasons to warrant a visit into the work areas. He took the position that interviewing nurses on the floor would be disruptive of their work and would impair patient care. Pou, instead, wanted to arrange for Inez Reyes Conde to come to the personnel office and to be interviewed privately by the union representatives. They refused because they felt that the glass-partitioned office offered little privacy.

With respect to the per diem nurse issue, the Union claimed it had received reports that they had been substituting for unit nurses with greater frequency. Quinones therefore asked how many per diem nurses were then employed, who they were and permission to observe the areas where they were employed. Pou refused.

With respect to the sick leave bonus complaint, the Union had received reports that there were breaches of the CBA provision for the liquidation of sick leave to the nurses. There was some discussion of that issue.

Quinones asked to inspect the nurses' timecards to check the payment of overtime. Pou offered to produce the documents for review by the Union but only within the presence of a Hospital personnel representative. Quinones refused, pointing out that the identity of the complaining nurse would be revealed by this condition and he feared retaliation. When asked in cross-examination, Davila failed to explain in his testimony why the Union could not obviate that problem by simply asking for all the timecards rather than those of the complaining nurse, and thereby also ensure that the problem did not impact other unit employees.

By letter dated January 28, Davila presented to Pou his recapitulation of the events of January 27 which did not, on all accounts, exactly track his testimony. In summary, he requested information as to the number of nurses' resignations in the preceding 4 months, their names, salaries, and ''any other condition of employment'' and the exact number of per diem employees working at the Hospital.

By letter dated January 20, Pou reminded Davila that the Hospital always used per diem nurses but the number varied in accordance to need caused by absences and vacations. With respect to the timecards, Pou reoffered the previous conditions and offered to investigate any nonpayment of overtime of any nurse named by the Union claiming such nonpayments. With respect to the liquidation of sick leave methods, Pou reminded Davila that the calculation was now made pursuant to the May–June implementation of Respondents' economic proposals.

Pou reiterated his willingness to permit the interviewing of individual nurses by union representatives, alone, in private, out of his presence, ''when there is a valid reason for it'' but that there would be no interviews permitted ''at the floors,'' which he concluded could interrupt their work functions and necessarily affect patient care.

Pou asserted in the letter that the Union had not clearly set forth the reason for a requested inspection of the fourth floor where the team nursing program was being effectuated.

Pou thereafter addressed himself to a union request to distribute literature in the employee dining room concerning certain continuing education courses. Apparently, he denied the request on January 27 because he pointed out in the letter that the Union had the opportunity to accomplish the distribution by posting at the union bulletin board near the timeclock where all employees pass, as the Union had done in the past.

The letter also referred to the enclosure of requested information as to resignations and the 10 per diem nurses then working, receipt of which Davila acknowledged in his testimony. On February 3, 1986, Davila wrote again to Pou wherein he claimed that he erroneously failed to recite in his January 20 letter that at the January 27 meeting, the Union requested that the Hospital not hire more per diem nurses because they affect the work performed by unit nurses.

4. Analysis of access issue

The thrust of the complaint allegations is that the Hospital unilaterally, without giving bargaining opportunity to the Union, implemented new union representative access rules on October 4, 1985, and thereafter, on certain specific dates in October and November 1985 and January 1986, enforced those rules after a precipitous incident on August 8, 1985. The General Counsel's theory of violative conduct is limited to that of an allegation of a violation of Section 8(a)(1) and (5) of the Act resulting from a unilateral change in certain working conditions, which, as a mandatory bargaining subject, requires preimplementation bargaining. The General Counsel alleges and argues no other right to union access other than that derived from that condition of employment established by the old CBA. Therefore, there was no litigation of the Union's extra contractual right to access nor its ability to communicate with its members in the absence of its contractual rights. Thus there was insufficient evidence to balance the Union's right to access against the Hospital's proprietary rights, including patient care maintenance.[12]

In the brief, it is argued that there was no evidence of justification for the motivation for the new rules but, rather, that the Union clearly demonstrated discriminatory application. The record does not support this argument. There is no conclusive evidence of discrimination. Quinones' testimony consists of accusations he made to Pou during their confrontation. There is no evidence of whether or not other labor organizations were, in fact, treated differently nor were there any details given as to the circumstances of their alleged distribution of literature at the Hospital. The issue was not litigated.

The Hospital's motivation was admitted, i.e., greater control of when and how outside union representatives communicated with its RNs on the Hospital floor at their work stations which self-evidently potentially affected patient care. Pou's testimony of past problems with Quinones is unrebutted. The General Counsel asserts that Davila visited the Hospital prior to August 1985 without problem. It however is unknown how many of these ''several'' visits entailed visits to nurses and how many visits were limited to meet-

[12] See *Brown Shoe Co.*, 312 NLRB 285 (1993), and its discussion of *Holyoke Water Power Co.*, 273 NLRB 1369 (1985), enfd. 778 F.2d 249 (1st Cir. 1985), cert. denied 477 U.S. 905 (1986); and *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992).

ings with Hospital office personnel persons. Furthermore, there are no details provided as to the circumstances of these visits on which to conclude whether or not there were problems.

The General Counsel finally asserts that the Hospital effectuated the new rules so as to keep its effectuation of the economic proposals ''hidden.'' This argument has no foundation in light of the Hospital's clear and unequivocal announcement of implementation and subsequent admission of implementation and the inevitable awareness of implementation that such unit members would acquire when claiming an accrued fringe benefit.

Finally, the General Counsel's theory of violation rests on his argument that the Hospital breached its bargaining obligation by effectuating the new access rules as a fait accompli prior to the October 4 bargaining session. The facts again do not support the argument. The Union was notified by hand-delivered letter of the Hospital's intention to implement its new access rules as of October 4, and it specifically invited negotiation. The Union's answer of September 27 failed to constitute a clear demand to meet and negotiate prior to implementation, nor did it request to delay implementation until after it had an opportunity to negotiate. The letter response contained a vague ''willingness'' to negotiate, which I find falls far short of what was obliged by a union when faced with a notification of intent to change on a mandatory subject of bargaining.

The Board in *Lapeer Foundry & Machine*, 289 NLRB 952 (1988), recognized the obligation of a union to seize the advance notification, bargaining opportunity and do something about it lest by its inactivity, i.e., its own conduct, it waives its statutory right. The Board cited *Paramount Liquor Co.*, 270 NLRB 339, 343 (1984), and *Smyth Mfg. Co.*, 247 NLRB 1139, 1168 (1980). In both of those cited decisions, by virtue of advance notification, an opportunity for meaningful bargaining had been provided but the unions there defaulted by their inactivity. I conclude that the Union here, although protesting the proposed changes as an unfair labor practice, not only failed to demand negotiation about the proposed change, but even refused to explicitly accept and avail itself of the opportunity to do so. Compare also *Paramount Liquor Co.*, 307 NLRB 676 (1992).

I accordingly find the access allegations relating to the October and November 1985 and January 1986 allegations to be without merit.

With respect to the August incident, the evidence does not support the General Counsel's argument that a change occurred with respect to the need to state the purpose of a visit by a union representative. Davila's experience is too limited to establish past practice, and his testimony too generalized and vague to be of much probative value. Thus Cruz telephoned Pou and notified him in advance of the purpose of their intended visit, and Quinones did the same on September 24. I conclude, however, that Pou did, in fact, precipitously attempt to implement a more restrictive policy. He however backed off, and the Union was afforded an opportunity to bargain which it failed to seize. I find it to be of little value to recommend any remedial order for this isolated, now ancient incident even if it were to have constituted violative conduct at that time. Therefore, I would find that all union access allegations ought to be dismissed, if not for the foregoing reasons, then because they are remote in time and have had no palpable impact on the parties' relations since January 1986. The record discloses that a time very late in the resumed litigation, the parties renewed negotiations in an attempt to settle this case, during which they came to agreement on all noneconomic terms of the contract. Failure to agree on the economic issues, including the restoration of unlawfully alleged (herein found lawful) fringe benefit reductions of 1985, aborted the settlement effort. A remedial order as to the visitation clause would have little relevancy to the basic unresolved dispute.

E. *The 1986 Negotiations—Information Requests and Unilateral Wage Increase*

The information issue had its genesis at the end of 1985, as noted earlier in this decision. As alleged in Case 24–CA–5275, unlawful refusals or dilatory compliance with union information requests are alleged to have occurred in late 1985 and early 1986; in Case 24–CA–5426, June through October 1986; and in late 1990 and early 1991 in Case 24–CA–6282. The last case was the first to involve Association information.

1. Late 1985—Early 1986 information requests—Case 24–CA–5275

In Case 24–CA–5275, it is alleged that on or about November 1, 1985, and on various dates thereafter, the Union verbally and by letters dated November 8, 20, and 27, 1985, and by letters dated January 8, 23, and 24, 1986, requested certain information of Respondent. The requests of November 1985, and the underlying correspondence were described above, i.e., 1983 and 1985 financial statements in audited or, if not available, unaudited preliminary form (trial balances), and a financial statement or trial balance for a recent 1985 month and payroll information of November 1985, including names, addresses, and current salary rates of unit members.

A November 15, 1985 response letter from Pou to the Union referred all the requested payroll information, inclusive of addresses, as enclosed but deferred production of the 1985 statement on grounds the final audit had not yet been made available. He promised it would be sent. The 1983 information was asked for on November 21 and received at the union office with a letter dated November 26. The General Counsel argues that Pou fraudulently backdated the covering letter to November 26 on the grounds that a union secretary entered a receipt date of December 5. Yet, Quinones' own hand-delivered letter, dated November 27, acknowledged receipt of Pou's forwarding letter and the 1983 financial statement. In his response letter, Quinones complained that he had not yet received the 1985 information. He does not complain in his letter about not receiving any of the payroll information nor of incompleteness of the 1983 financial statement.

A letter dated on December 2, 1985, sent by Pou and received by Quinones referred to an enclosure of the requested 1985 unaudited financial statement. In his letter of December 9 in response to Vega's December 4 letter, Quinones accused Vega of avoiding his telephone calls but is silent on the information issue.

Quinones testified that his November 8 requested financial information was for the use of the Union's financial analyst, Tirado, and that the payroll information was necessary to dis-

cover whether there had been any salary changes, whether overtime had been paid and to keep track of the number of employees and the turnover rate. He testified in conclusionary terms that he needed the unit members' addresses because the Union had ''practically'' not been allowed access to the Hospital. The evidence does not clearly establish that Quinones had not received the addresses asked for earlier in 1985. There however is no evidence that use of the union bulletin board was discontinued nor that the on-the-job stewards were dysfunctional, nor that nonemployee union representatives were prevented from meeting with the chief steward in the employee dining room, privately in the office or with unit employees in the dining room on 12 hours' advance notice.

Quinones testified that although he received Pou's November 15 letter which purported to enclose payroll information including addresses, he received everything but the addresses. He did not explain why he failed to complain about it in his correspondence which complained about the delay of the financial information. Pou testified that all payroll information was forwarded on November 15 and he assumed it had been received because the Union never complained that it had not. I credit Pou. I find it highly impossible that Quinones, who was documenting alleged information request noncompliance in his correspondence, would not have raised it immediately in a response letter.

By letter dated January 8, 1986, Quinones complained to Vega that for the preceding 3 weeks Vega had not responded to ''repeated'' requests for the audited 1985 statement. In fact, the past requests asked for audited or, if unavailable, nonaudited statements. Quinones further raised questions regarding the unaudited information submitted, i.e., the September 30 fiscal year rather than the normal June 30, a cash balance discrepancy between the years ending 1984 and beginning of 1985; and an apparent above-the-market, $2 million loan interest rate. The letter pointed out the Union's need to know what impact a raise and benefit increase would be ''in terms of funds'' and finally requested a meeting between Gonzalez and the union analyst-consultant, Tirado, to clarify ''some doubts.''

On January 16, Davila wrote Vega by hand-delivered letter, asking Vega to contact him for the purpose of resuming CBA negotiations and promised the ''utmost flexibility'' and a ''willingness to make changes in our initialed demands if the Employer does the same.''

By letter dated January 21 (but postmarked January 29), Vega responded to Quinones, promising that the Hospital would forward to the Union a copy of the final audited 1985 statement when it was received by the Hospital. The auditor's report for the fiscal year ending June 30, 1985, offered into evidence by Respondent is dated August 27, 1985, but the auditor's release date was December 10, 1985, i.e., the date it was released to Respondent Hospital. He proffered explanations for the September 30 date and cash balance discrepancies. He also estimated the total cost of the Union's requested increases in salary and benefits to be $7.9 million over 3 years. He also explained why the debt interest rate was not renegotiated and promised to contact Tirado to set up a meeting with Gonzalez.

By letter dated January 22 (but postmarked January 29), Vega responded to Davila and, inter alia, solicited new union proposals, noting the Union's past adamancy as to salary and fringe benefit increases.

By letter of January 23, Quinones suggested a meeting with Tirado during the week from January 27 to 31 and reiterated his request of January 8. Quinones also asserted a willingness for the ''greatest possible flexibility.''

By letter dated January 24, 1986, the Union again requested the financial statement information it claimed that it needed for Tirado to make his financial analysis of Respondent's operations. Additionally, it requested information relating to job duties and classification for the RNs; information relating to personnel reductions during the past 3 years; the number of temporary, contract, and per diem employees employed at the Hospital, and the jobs held and departments where the employees are located; work schedules for RNs in all departments and specifically where the team nursing concept was being implemented; and finally, the number of days off which a nurse who works 6 days enjoys.

The correspondence of January 28 and 30 was described above in the access issue discussion. Throughout the period, the parties also exchanged correspondence centered about grievances over the ongoing effects on employees' fringe benefits of the accrual changes implemented in May–June 1985, alleging them as continuing unlawful, unilateral changes.

On February 27, 1986, Davila requested by letter that Pou provide copies of January and February 1986 payrolls of all other bargaining units in order that the Union might compare them with unit employees to determine if liquidation for sick leave of unit and other employees was paid. He also requested unit nurses' January and February timecards and the payrolls of unit nurses of January and February 1986. There is no allegation of unlawful noncompliance with this later request.

By letter dated March 7, 1986, Pou responded to Davila with an explanation of the situation in writing, which he surmised would satisfy Devil's request of February 27. As to the timecard request, Pou recited Quinones' demand for private examination and declination of Pou's offer previously made and reiterated in his January 30 letter. Pou also made an alternative suggestion as to how the timecard inspection could be resolved, including an offer to photocopy some of them, or even all of them, although, if the latter, it would be at union expense for 600 timecards.

On March 11, 1986, Vega forwarded to Quinones a letter purporting to enclose the Hospital's final audited financial statement for the fiscal year ending June 30, 1985.

The General Counsel argues that with respect to the information requested from November 1985 through January 1986, the Hospital partially failed to comply and that when it did comply, it did so in an incomplete or dilatory fashion. The General Counsel's first assertion that unit employee addresses were not tendered rests on the discredited testimony of Quinones.

The General Counsel claims that the tender of the 1983 final audit was incomplete. It appears that parts may have been missing, i.e., the auditor's introductory remarks and the auditor's notes. What was disclosed however were the balance sheets, reflecting assets, liabilities, earnings, expenses, deficits, fund reserves, etc., for the fiscal year 1982 and 1993, i.e., the raw data on which conclusions were based. There is no testimony as to the significance or need of the

auditor's notes, or whether the Union ever complained about the need for these elements of the 1983 final audit. The Union's correspondence failed to complain about incompleteness despite the fact that Quinones' requests were made in consultation with the expert advice of Tirado. Clearly, Tirado's expertise would have encompassed knowledge of the component parts of an independent audit and whether they were necessary and relevant at that point for the Union's bargaining decisions. The General Counsel argues that what information that was provided was not useful. There is no evidence to support this conclusion. Certainly, data including earnings, losses, deficits, etc., cannot be characterized as useless. There is no evidence that what was submitted was useless. The auditor's notes under the section, ''Related Party Transactions,'' however, do reflect the aspects of the relationship between the Respondents, e.g., lack of rent paid for the clinic, amount of cost for medical services rendered to the Association, and the Association's guarantee of Hospital debts. The auditor's notes also discuss such important factors as the liquidity of the Hospital. Except for the Association relationship, there is nothing in the undisclosed information which runs counter to the Hospital's bargaining claims of operational deficits for the Hospital, per se.

Finally, it should be remembered that the Union had already stated its position of awareness of a special relationship between the Respondents, that it had its own undisclosed information to support its conclusions of the Hospital's sound economic condition, and that impoverishment was artificial because of the Association's exploitive relationship. Despite the claim, the Union still had made demands limited to the Hospital's financial statements and none specifically regarding the Respondents' relationship, nor of the Association's financial situation. The last item was not requested until the 1990–1991 events. The March 11 submission of the final audit for 1985 included the auditor's introduction which contained the release date.

There is no satisfactory explanation by the Hospital's witnesses as to why there was about a 3-month delay from the auditor's release date of the 1985 final formal audit to the date it was forwarded to Quinones in March 1986. Except for the notes regarding the Respondent's relationship, it substantiated the Hospital's representations of operating deficits. The General Counsel in his brief suggests that the Respondent excised the auditor's introductory remarks from the 1985 report because it disclosed the earlier release date. This same excision however was also made in the 1983 reports which was more quickly produced.

There is no evidence, nor argument, that other items of requested information were withheld or dilatorily produced up to the next negotiation meeting of April 11, 1986, or immediately thereafter. There is no evidence as to the significance of the difference, if any existed, between the preliminary 1985 audit and the final audit except for the auditor's notes which did not accompany the preliminary audit.

2. April 11, 1986 negotiation meeting

As of April 1986, the Union had sent two January letters suggesting a meeting or at least a meeting with Tirado and Gonzalez. On January 27, Vega had responded by noting the Union's past adamancy to even entertain discussion of economic cuts and solicited a union counteroffer as to evaluate whether a resumption of bargaining would be meaningful. The General Counsel argues in the brief that no meeting was held until April 11 because of the Hospital's refusal to supply information and the Hospital's ''recalcitrant position of not negotiating until the Union made movements in its demands.'' Quinones' generalized, cryptic, but uncontradicted testimony is that he was given a variety of reasons why Gonzalez was unavailable, e.g., illness, absence from Puerto Rico, etc. Quinones wrote letters suggesting meetings even though he had not received all requested information on those occasions.

There is no tape recording for the meeting of April 11, 1986, and only sparse, unclear testimony as to how it was arranged, who was present, or what was said. Pou merely testified that it was one of three meetings held on December 18, 1985, and April 11 and June 24, 1986, at which the Union's position remained unchanged. The Respondent's position accordingly was unaltered.

On April 15, Quinones submitted to the Hospital its first counterproposal since April 3, 1985. Quinones testified without contradiction that he had telephone conversations with Vega during which they discussed whether they could make some breakthrough in the negotiations. A union counterproposal was suggested. Accordingly, Quinones submitted it on April 15. He testified that it constituted a substantial reduction in union demands and was the maximum reduction that the Union could offer in the absence of Hospital's economic information. He testified that it was his maximum flexibility because he ''still did not have the information, the economic information,'' i.e., the auditor's notes described above and the further analysis and explanations from Tirado.

3. June–August 1986—Information requests and refusal to bargain—Case 24–CA–5426

By letter dated May 13, 1986, Vega responded by acknowledged receipt of the counteroffer that was intended ''at breaking the impasse existing in the negotiations.'' Vega noted that although the Union had modified its economic demand, it still demanded restoration of the status quo in fringe benefits prior to the May–June implementation of fringe benefit cuts. Vega rejected the counterproposal and asserted not only a lack of improvement in Hospital finances but rather a deteriorating economic situation which now made cost reductions ''more imperative.'' Vega asked the Union to reconsider its demands.

Quinones responded by letter dated June 10, 1986, and, inter alia, denied the existence of any impasse at any time during negotiations but, rather, he accused the Hospital of bad-faith bargaining. In response to Vega's reassertion of exacerbated Hospital losses, Quinones, in his letter, demanded to be supplied with ''all information, reports, minutes, ledgers, documents, payrolls, studies and all information which induces you to sustain such economic position concerning the negotiation.''

He also asked specifically for:

> 1. A patients' census for 3 years.
> 2. All employees' payrolls that reflected salaries and conditions of employment of administrative employees, and that of all other bargaining units undergoing contract renegotiation, i.e., office clerks, maintenance, LPs, and operating room technicians and RNs for the months of January and May 1985, and 1986.

3. Doctors' contracts for all departments.
4. All per diem nurses' contracts.
5. A list of nursing supervisors.
6. The amounts of all Christmas bonuses paid to each unit employee.
7. A balance sheet and profit and loss statement for 1985–1986.
8. Names, addresses, and telephone numbers of all unit members who had worked in the Hospital for the past 2 years ''and who have resigned.''

Despite his insistence that there had been no impasse, Quinones testified that he made the information request to break the ''impasse.'' He explained that he wanted to ascertain whether salaries had increased for nonunit employees, whether employment had increased or not, and whether and how the implemented cuts affected unit employees. He testified that he had received reports that emergency room doctors' salaries had increased. He wanted to confront the Hospital in negotiation with that information. Quinones also explained that unit members had reported that per diem nurses were being paid a higher salary and worked better shifts with better work programs and that supervisors were doing unit work. He testified that he requested financial data on the advice of Tirado who needed it for his evaluation. He wanted the address and telephone numbers of the nurses so he could contact and ask them about their salaries. Quinones testified that this information was never provided by the Hospital nor was his letter ever answered. Vega testified that it was the Hospital's ''policy'' to supply all requested relevant information, including financial information, and he complied with the June 10 request. There is no correspondence as to such until a letter dated September 17, 1986, was sent to the Union from Vega.

On June 19, by letter of that date to Quinones, Vega confirmed agreement to meet on June 24 at the Puerto Rico Labor Department, Conciliation and Arbitration Bureau. It addresses Quinones' May 13 letter but is silent on the June 10 letter.

The parties' negotiation teams met on June 24 and included Gonzalez. In that tape recorded meeting, Vega referred to the Union's May 13 letter and its counterproposal. He acknowledged receipt of an information request letter on June 17 at 3 p.m. and promised to comply shortly. Insofar as proof of the Hospital's poor financial situation, Vega stated that from July 1, 1985, to April 30, 1986, the Hospital had a $795,838 deficit. Quinones asked the reason for it, and Vega referred him to Gonzalez to explain while he also handed Quinones an unaudited preliminary financial statement for the first 10 months of fiscal year ending June 30, 1986. Gonzalez then referred to a reduction in income from 1985 and an increase in expenses.

Quinones impatiently stated that he would refuse to listen because it was ''irrelevant'' and not responsive to his request. But he then demanded an explanation of what ''extraordinary'' event had caused the huge loss. Vega asked him to give Gonzalez a chance to explain. Quinones, however, insisted that his question be answered. After a speech, Quinones then suggested that Gonzalez agree to a meeting that the Union had long been seeking so that the Union analyst could ''deal with numbers.'' Vega did not deny, defend, nor justify the failure to provide Gonzalez for a meeting with Tirado. Quinones resisted efforts by Vega to have the union negotiators listen to Gonzalez' further explanations. Vega suggested that if Quinones refused to listen, they ought to stop negotiations. Quinones answered:'' We have assumed a position and we are not going to change that point.'' Vega tried to convince Quinones that Gonzalez would explain the $795,038 loss as the ''extraordinary event.'' Quinones refused again to listen to ''numbers.''

Gonzalez then explained the various factors that caused increases in ''all costs,'' e.g., the costs of malpractice expenses, state unemployment insurance costs, meals to patients, equipment depreciation, medical diets, coupled with a decrease of 5573 fewer patient days. Gonzalez and Quinones then argued the relative probative value of depreciation factors, but Gonzalez explained that he was referring to a recent need to invest $1 million in new equipment. Gonzalez referred to the 1984 financial statement. Quinones then argued that the union analyst has been requesting a meeting with Gonzalez to discuss that very document, but for ''8 months'' a meeting between Tirado and Gonzalez has not been able to be accomplished. Quinones then demanded that there should be a meeting between Tirado and Gonzalez. Vega suggested that he and Quinones ought to be present at such meeting.

After a break in the tape recording, Quinones is heard arguing that the Hospital had saved money because only 24 of the old unit members have remained employed and the others were replaced by new nurses at a the lower starting base rate. He then pointed out other areas of possible savings, i.e., employ less clerical employees and less LPNs, and he accused the Hospital of not even offering at least a $10 raise.

Vega reiterated the losses. He recalled Quinones' repeated statements that he would rather ''lose the Union'' then agree to any reduced benefits. Vega characterized the Union's position as rigid and causing an impasse. Quinones denied impasse but refused to listen further to Gonzalez and called the claim of poverty to be untrue. Quinones refused to consider and discuss any reductions in fringe benefits. At this point in the tape recording, Quinones went back to the topic of information production where he objected to conditioning the meeting of Tirado and Gonzalez in Vega's and Quinones' presence. Vega answered that if Quinones did wish to be present, he would be there and that Tirado ought to telephone Gonzalez to set an appointment. Quinones suggested that because Tirado and Gonzalez will later discuss the finances, it would be a waste of time for the Union to listen to Gonzalez' explanations at that time.

When Vega attempted to talk about the Hospital losses, Quinones changed the subject by arguing that there never had been an impasse, but rather there was a Hospital refusal to bargain, a failure to agree to a meeting with Tirado, and a failure to produce requested important information for Tirado. He reminded the Hospital that after the last CBA had been agreed on, the Hospital suddenly filled its beds and flourished economically.

Vega asked him repeatedly whether the Union would even consider the reduction of benefits. Quinones then refused to accept any reductions in either vacations, Christmas bonuses, or sick leave. Vega rejected an $80 salary raise because the Hospital had ''no money.'' They then argued over the legality of the alleged impasse in 1985 and the implemented reductions thereafter. Arguments were reiterated, and Vega

then suggested that they defer negotiations until Tirado could meet with Gonzalez at which time Quinones could be present as he wished. Although Quinones suggested that they discuss one more unspecified issue, Vega and his team departed, to which Quinones stated: ''Well then say 'there is an impasse.''' Thereafter, a meeting with Tirado and Gonzalez was set for August 11, 1986.

4. August 1, 1986—Unilateral salary increase; August 5 refusal to bargain over salary increase and all other nonagreed-on articles—Case 24–CA–5426

The meeting of August 5, 1986, which was tape recorded, commenced with Vega making an indecipherable reference to the basic salary. Davila called it laughable. Quinones called it disrespectful and reiterated a demand for an $85 raise for each of 3 years. Vega answered that any raise meant an increase in operational costs at a time of financial losses and at that time it could not afford any more. Quinones argued for retroactivity, but Vega insisted that any raises would be prospective from the ''execution'' date. Quinones flatly stated that he would not negotiate a prospective raise. He alluded to this impending litigation and offered to settle the case and negotiate a CBA, but only on a retroactive basis. He refused to consider any reductions in benefits and stated that since there is ''money,'' they would all rather ''die'' than accept any fringe benefit reduction. Quinones then stated that he would rather have the Union lose its position as designated bargaining agent because, like General Douglas MacArthur, he would return rather than bargain ''in reverse.''

Vega told him he must be made to understand the serious economic problem in the Hospital industry. Quinones answered: ''I know it all.'' Quinones refused to consider acceptance of any single one of the several implemented benefit reductions but offered to negotiate the amount of backpay he expected to be due as a result of this litigation. Vega attempted to allude to the Hospital losses and reduced bed occupancy and a deficit of $795,000 as of April 30. Quinones ignored it and said that this litigation was the cause of a lower bed occupancy. He said: ''we are going to show you can pay.'' Quinones persisted in refusing to consider benefit reductions saying that it was ''too late'' to discuss it and insisted on a package unfair labor practice charge settlement and CBA agreement under which the Hospital must settle its ''debt'' to the unit members, i.e., restoration of pre-June 1985 status quo benefit levels.

Vega counteroffered continuing the same medical plan for RNs with the same employer contribution and uniforms as in the old CBA, and a basic salary increase of $40 but no other salary increases. Quinones retorted that the Hospital owed hundreds of thousands of dollars of backpay, accumulating since the alleged May–June 1985 impasse.

They argued about Quinones' refusal to listen to economic arguments of Vega and the proffered explanations of Gonzalez. Quinones reminded Vega of the previously agreed-on meeting pending between Gonzalez and Tirado, now set for August 11, at which time he predicted that the Hospital's ability to afford raises for RNs would be ''revealed.'' Finally, he complained that the Union was still waiting for information it had requested ''a long time ago'' in order that it could make ''intelligent decisions in this negotiation.''

Vega protested that at no time did Quinones state even a willingness to accept some reduction of benefits. The parties caucused, and the tape recording ended.

Thus Quinones quite clearly stated an adamant position but yet deferred discussion of the Hospital's claimed financial distress to the evaluation of the union analyst, Tirado.

Despite the pendency of the Tirado-Gonzalez meeting and the significance placed on it and on outstanding requests for information to support the claim of poverty, the Hospital announced to the Union in a hand-delivered letter dated August 5, 1985, to Quinones from Vega, that because of a perceived lack of agreement on the basic salary, it was effectuating as of August 8 retroactive to August 1 a $40 increase in the RNs' basic salary. Vega conceded that it was a modest raise but referred to the financial statement of April 30 he had handed to Quinones and the outstanding $795,000 deficit. He finally offered to negotiate as to the terms and conditions of employment of the RNs.

On August 5, the Hospital announced to unit members, by way of memorandum, the $40 basic salary increase.

The General Counsel argues, and the complaint alleges, that Respondent refused to negotiate anything at the August 5 meeting except the basic salary increase. The transcript fails to substantiate this assertion, and he cites no testimony or other evidence in support of it.

The General Counsel introduced unrebutted evidence that two newly hired nurses had been given the higher rate as of August 1, 1986.

5. The August 11, 1986 meeting and information request—Case 24–CA–5426 continued

On August 11, the parties' negotiators met again at the Puerto Rico Department of Labor with Tirado, Gonzalez, Union Attorney Pedro Baiges Chapel, and Union Accountant Juan Reyes. The meeting was tape recorded.

Quinones opened the meeting with an announcement that, finally, after many months for a requested meeting and requested information to prove poverty, Gonzalez was now available to be questioned by Tirado and Reyes. Vega retorted that the Hospital had already given the Union financial statements for fiscal years ending June 30, 1984, and 1985, and a preliminary statement ending April 30, 1986. Tirado, after some searching of his files, discovered that he had in his possession the 1984 and 1985 documents but not the 1986 report, a copy of which was then handed to him. He made no reference to an absence of auditor's introduction or auditor's notes for any report.

Tirado questioned Gonzalez as to certain expenses, debts, and outstanding loans, including a debt to the Teachers Retirement Board, of which Gonzalez promised to provide information. Gonzalez explained payments to suppliers and improvements in the Medicare situation, the ratio of revenues sources, and the biweekly Association advance payments. Tirado asked him to compare the costs charged to the Association with the other large clients. The transcript does not clearly reveal that Gonzalez gave a direct response. He referred to an unspecified per diem charge. The 1985 final audit contains data as to the total cost for services charged to the Association. Gonzalez did provide certain figures to certain special services.

Tirado opined that the Hospital appeared to be undercharging all its clients and thereby was constantly extending its

deficit. Gonzalez referred to it as the malady of the health care industry in Puerto Rico, that because the average hospital stay per patient was decreasing and out-patient care facilities proliferating, overabundance of empty beds resulted in a very competitive situation.

Tirado asked whether the Association intended to modernize the Hospital's facilities. Studies to that intent were explained by Gonzalez. Tirado acknowledged the problem of a declining patient census, i.e., bed occupancy rate of 80 percent in 1985 and 76 percent as of June 30, 1986. Tirado than asked Gonzalez to ''expound'' on the financial statements and to send him a copy of some kind of ''table'' Gonzalez had in his hands.

Tirado requested an itemization of ''the different payrolls . . . group of employees.'' Vega and Gonzalez however gave him the total payroll costs as of April 30, 1986, for 1 month and for 18 months, i.e., $7 million for a decreased total employment of about 685 persons from a high of 1000, of which there were 140 RNs down from 175 3 months earlier.

Tirado asked for an appraisal of the land and building and was promised he would be sent it, although Gonzalez complained about the cost of hiring an appraiser. Quinones reminded Tirado of Gonzalez' promise to provide Tirado with payrolls of all employees in all seven units. Tirado stated what he needed to see were ''some totals by items . . . more or less.'' With respect to unit employees, he said he had received that information. Tirado asked and received the information as to whether the Hospital's rates were competitive. Tirado then generally questioned the rates charged by the Hospital to the Association and was told when he asked, that they had been increased ''in the past few years,'' although Gonzalez said it was ''not way up there.'' They then discussed the problem of a declining bed occupancy rate. Tirado then went on to suggest that low morale caused by poor labor relations caused the Hospital's reputation and occupancy rate to suffer. He speculated that at the declining bed occupancy rate the Hospital was suffering, it would probably have to close down in 2 or 3 years. He stated however: ''I believe the [Hospital] is sufficiently solid with the matter of the [Association].'' Gonzalez responded: ''Yes, that's right.''

Gonzalez then discussed the threat of reduced Medicare income but said that the Hospital had planned intelligently to cope with the new billing procedures. He explained the general extent of Medicare income. At that point, he was questioned about and explained the relative proportion of services provided to the Association. The topic of the Association's clinic was raised by Gonzalez, and Tirado questioned him as to the disclosure that the Hospital did not derive income or rent from the Association's clinic except for reimbursement for utilities expense. Gonzalez explained: ''Well, but we must consider that the hospital belongs to the teachers.'' Tirado then stated his conclusion that the Hospital was operating at a loss because it was ''at the service of the [Association].'' Gonzalez disagreed and pointed out other expenses, inclusive of increased malpractice liability expenses.

Tirado returned to what he called his principal interest, i.e., the comparison of rates charged to the Association and other clients and the relative number of patients for each. Gonzalez promised to ascertain that information. Tirado pointed out that:

> As long as the [Association] doesn't have to dig into their pockets they are happy and the Hospital will never show a profit.

He acknowledged however that the declining bed occupancy did create a ''big problem.''

Quinones interrupted to make certain that Tirado would be provided the comparative rates for services rendered and charged to the three major clients in no less than 2 weeks. Tirado stated he would be out of Puerto Rico on business and wanted to know when he would be given the information so he could arrange his itinerary. Gonzalez said he would be hard pressed to provide it in 1 month because of an ongoing Medicare audit and the ongoing independent audit. He did state that he already had preliminary data but would have final data in September. He showed Tirado some of the preliminary data from the independent auditor. Tirado laughed and said he could not wait 6 months for the formal audit. Gonzalez promised to send him the ''short'' Medicare cost report by October 1.

Gonzalez thereafter explained to Tirado the classifications of services provided to patients and the operation of the Association clinic. Again they discussed the lack of rent charged to the Association. Tirado asked to be provided with the square footage of the clinic so that he could estimate the full market value or rental for the clinic space.

A variety of questions were asked, discussed, and answered. Finally, Tirardo summarized what information he was to be provided. He specifically referred to the payroll ''breakdowns,'' the short cost report to Medicare and Triple S, as well as all service contracts with Medicare, Triple S, and the Association. Gonzalez asked for and was given Tirado's telephone number or, alternatively, if he was absent, that of Reyes. Vega then said to Tirado. ''We send the information to you, isn't that so? Give me . . . [your business] card.'' Reyes suggested that if unavailable, they should contact Quinones. Vega even suggested that the information might be available within the week. Tirado stated a preference to send the information to Reyes whose computer he would use. Gonzalez agreed to do so. The last tape recorded meeting ended after 2 hours of discussion.

There was no effort made by the Union at the August 11 meeting to discuss any other subject matter, and there was no discussion as to any other item of information that the Union had requested in its prior correspondence.

Tirado testified that he never received the information he had requested from the Hospital.

6. August 29, 1986 information request—Case 24–CA–5246 continued

By letter dated August 29, 1986, to Pou from Quinones, production of the following information was requested:

> 1. Copy of Financial Statement for Fiscal Year 1985 which ended on June 30, 1985.
>
> 2. Copy of Financial Statement including Profit and Loss Statement for Fiscal Year 1986 which ended on June 30, 1986.
>
> 3. Copy of Annual Reports which the Hospital sends to the members of Asociacion de Maestro.
>
> 4. Payrolls for ''PER DIEM'' nurses who work in the Hospital.

5. Complete payrolls for all employees who work in the Hospital.

6. List of RNs who work in the Hospital, by Department and Entrance on Duty Dates.

7. List of nurses who have resigned during the past 8 months.

8. Names and address[es] of all RNs who work in the Hospital.

9. Names of all persons who have resigned, their salary and any other condition of employment.

The letter complained that previous information requests for this material had not yet been satisfied. It also requested another negotiation meeting.

By letter dated September 17, 1986, addressed to Quinones, Pou acknowledged receipt of the Union's August 29 letter on September 5. Pou's letter stated that the following items requested in the August 29 letter were therewith submitted as requested: items 1, 2, 3, 7 (with a reminder that it had already been provided), and 8. The letter claimed that item 9 had already been supplied with respect to unit persons who Pou asserted were ''pertinent,'' i.e., he implied that other resignations were not relevant.

With respect to item 4, requested ''per diem'' payrolls, Pou's response was merely a recitation in the letter that 22 per diem nurses were employed ''to cover absences and shortages of personnel.'' As to item 5, the requested complete payroll for all Hospital employees, Pou recited that he had already informed Quinones at the August 11 meeting that the total average monthly payroll was $570,000. He stated in the letter that a payroll breakdown for the months from January through April 1986 was enclosed.

With respect to item 6, a list of unit nurses by department and entrance-on-duty dates, the response letter referred to an enclosed list of unit nurses based on seniority with addresses, composed of two parts including the 163 unit nurses then presently employed.

There is no dispute that the information claimed to have been provided with the September 17 letter was in fact provided with the letter. There is also no dispute that the Hospital had within its possession the information that was withheld, i.e., the per diem nurses' payrolls, payrolls of all Hospital employees, and names and addresses of all resigned employees. The Hospital argues, however, that the payroll data had already been provided to the Union in its November 15, 1985 response to the Union's November 8, 1985 requests for a current employee payroll. That request, however, was limited to unit employee payrolls.

7. October 2, 1986 meeting

In his response letter of September 17, 1986, Pou expressed a willingness to resume negotiations and referred Quinones to Vega to set up a meeting. Eventually, a meeting was held on October 2, 1986, but there is little testimony as to this encounter. Pou testified that it was agreed on as an ''off the record'' meeting between the union spokesperson, the union attorney, and the Hospital's spokespersons, and therefore no notes were made. There was no other testimony about this meeting.

In a letter dated October 2, 1986, to Quinones, Pou referred to a purported conversation with Quinones at the October 2 meeting during which the Hospital explained that it could not meet the September 30 deadline to provide information promised to Tirado because of Gonzalez' promotion to the position of director of finances and the need for him to continue with his comptroller duties which involved the pressing need to ''render a series of reports which are very important for the Hospital's finances.'' Pou asserted in the letter that Quinones had agreed to an extension of time which Pou projected would be met before October 15, 1986. Nothing was stated either at the August 11 meeting or in the October 2 letter about any doubted relevance of information required by Tirado.

8. The October 22, 1986 information request

On October 22, 1986, by letter of that date addressed to Gonzalez, Union Attorney Pedro Baiges Chapel alluded to a ''September 19, 1986'' statement with respect to Gonzalez' preparation of requested information. He made no further comment about Tirado's or Quinones' informational requests except to recapitulate information that had been requested as follows:

1. All the statistical and financial information used in preparing the Medicare Costs Report for the fiscal year ending on June 30, 1986.

2. You are requested the medicare costs Report or Schedule for the fiscal year ending June 30, 1986 [sic].

3. We request from you the preliminary audit report that you were available to discuss on the week of September 22, 1986 with the outside auditors [sic].

4. I request from you the Report prepared for the Board of Directors of the Hospital and in regard to the financial status of that Institution which you should have prepared by September 27, 1986.

5. We are requesting you the Accounting Reports mentioned in Section E of Page 3 of the Sworn Statement marked in Affidavit No. 315 [sic].

Davila testified that the letter was prepared with his assistance pursuant to consultation with Tirado and at Tirado's request. Davila testified that he had no awareness that the information had ever been supplied. The letter was stipulated to as authentic and was, according to record evidence, received by the Hospital despite Pou's lack of recollection of having seen it.

9. February 19, 1987 information request—Unalleged in complaint but litigated

Pursuant to consultation with and at the request of Tirado, Davila by letter dated February 19, 1987, addressed to and received by Velez on behalf of the Association, for the first time in writing requested information from and/or about the Association and its relationship with the Hospital. Despite Vega's testimony that there had been a request for information related to the Association in August 1986, the only clear record evidence of such is that referred to in the August 29 letter concerning Hospital reports to the Association and the information requested by Tirado on August 11, 1986.

Davila's written request of February 19, 1987, included requests for:

1. Medical or hospitalization service contracts between Respondents.

2. ''Regulations'' governing their relationship.

3. Criteria used by both to determine service rates charged to the Association.

4. General criteria for rates charged by the Hospital.

5. Copies of service contracts between the Hospital and the Triple S and Blue Cross Insurers.

The letter also requested Velez to contact the Union to arrange a meeting that week at which ''accounting records and Collection Files'' will be available for study by Tirado.

Davila further requested in the February 19 letter the Association's balance sheets, its profit-and-loss statements for the preceding 3 years, as well as an ''enumeration'' for the same period of time of the Hospital's payrolls ''per employees' groups'' and a ''history'' of salary increases inclusive of managers and employees by classification. Davila reiterated the August 11 request for the Hospital building appraisal and ''payrolls and financial statements.'' He also asked for data reflecting the Medicare billing for each patient for the preceding 3 years and noted that Vega's August 11 promise to supply it was not fulfilled.

Finally, Davila specified that the requested Association financial statements be audited and should include the auditor's opinion. His last request was that Velez supply to the Union the Association's annual reports for the preceding 3 years.

By letter dated February 27, 1987, signed by Attorney Heber E. Lugo Rigau of Cancio, Nadal & Rivera, the Association responded to Davila by refusing the request. The grounds for refusal were the alleged absence of ''relation or legal tie at all'' between Respondents. The letter referred Davila to the Hospital with respect to Hospital information.

10. March 16, 1987 meeting

This was the last meeting held at which Pou attended prior to the termination of his services for the Hospital. There is no evidence as to the substance of the discussion.

On March 19, the Union forwarded a copy of its February 19 letter to Pou who thereafter reiterated the position that Association-related data was irrelevant to the collective bargaining. With respect to the data promised by Vega on August 11, Pou now, by his response letter of March 31, demanded for the first time a written statement of relevancy.

On June 2, 1987, Quinones wrote to Aldarondo and suggested that a CBA might be negotiated in the context of a settlement with respect to alleged backpay due since 1985 and a withdrawal of charges.

On June 19, 1987, Davila responded to Pou's foregoing request of Quinones to explain the relevancy of requested data concerning the Association. Davila therein delineated the relationship aspects noted in the auditor's notes which suggested control by the Association and an unfavorable relationship compared to other health insurers. Because of the perceived control of the Hospital and the assumption of its debts, Davila argued that it was necessary to know the financial position of the Association to enable the Union to understand the Hospital's financial position. Davila pointed out that with the requested information, the Union would be in a position to ''offer relevant recommendations.'' Davila complained that data already provided by the Hospital did not include the auditor's opinions and footnotes. He further explained the need for information to estimate the financial impact of salary increases. He explained that a building appraisal was needed to establish the market value of the building ''so that the external auditors may set the present value as a base to balance out the building on the financial statements.''

Davila asserted that it is the Union's perception that Medicare usually sets the lowest rates and that any lower rates would be unreasonable. Thus the Union needed to compare Medicare and other rates.

Davila claimed inaccurately that it had requested all this information since 1985. He argued that it was necessary for intelligent bargaining by the Union.

Finally, Davila requested copies of the Association and Hospital's health plans from 1984 through 1987, a copy of the contract for the Association health plan, and a copy of the brochure for the health plan inclusive of physicians' directories, services offered, medical plan rates, and benefits.

Record evidence of any further correspondence between the parties does not occur until 1990.

F. *Late 1990—Early 1991 Information Requests—Case 24–CA–6282*

The March 26, 1991 complaint alleges unlawful refusal of information requests made by the Union on the Hospital on November 14, 1990, verbally and thereafter, and by letters of November 14, 1990, and February 8 and March 31, 1991.

1. November 14, 1990 request

Since January 1990, the Union had requested and been refused on grounds of nonrelevancy certain information relative to per diem nurses employed at the Hospital although other information was provided. Meetings between the parties had lapsed. The last meeting appears to have occurred on March 13, 1990, but there is no testimony as to its substance. On September 12, 1990, the Union and other unions jointly communicated by letter to Attorney Luis A. Nunez, now representing the Hospital, which confirmed agreement to a collective-bargaining meeting on September 24, 1990, jointly with several bargaining units. On September 18, 1990, Nunez responded by letter of that date indicating a willingness to meet but observing that although the Hospital had previously complied with the Union's informational requests, the Union had been silent as to a resumption of bargaining and had not moved from its position of demanding full status quo ante restoration of fringe benefits cuts from 1985 as a condition precedent to bargaining.

Quinones responded by letter of October 23, 1990, which noted that he had contacted the mediator for resumed negotiations and reiterated the union claim for unproduced information he said was necessary for intelligent bargaining. Quinones denied the alleged status quo restoration condition precedent to bargaining assertion. The Union however did not at any time give any indication that it had abandoned its adamant bargaining position for a retroactive restoration of pre-1985 fringe benefit levels.

By letter dated November 2, 1990, to Quinones, Nunez claimed production of requested information ''a long time ago'' and receipt of no other requests up to October 23. He welcomed the ''clarification'' of the union position regarding fringe benefit cuts restoration.

By letter dated November 14, 1990, to Nunez, Quinones identified the information the Union required, i.e., that relat-

ing to per diem nurses. He enumerated and specified as follows:

> 1. We need a list of registered nurses who work on a per diem basis as of the date in which the information was requested for the first time.
>
> 2. We also request that you send us a list of per diem nurses who work in the Hospital at the present time.
>
> 3. We presently request the work schedules for this group of employees as of January 1990, February 1990, March 1990, September 1990, and October 1990.
>
> 4. At this time we would also like to request the corresponding payroll for these same employees during the months mentioned in section 3.
>
> 5. We repeat our request for a list of registered nurses' years of employment, their corresponding salaries, and the differentials.
>
> We would like for each employee to please be specific as to basic salary of each nurse, and to specify each differential of salary and the reasons behind these differentials. We would like for you to indicate the postal address of each nurse and the particular department for which each nurse works.
>
> We reject your suggestion that no request had been made for additional information and although we have not met to go over the articles of the agreement in detail, the employer well knows that the Labor Unit has been making an effort to push for the negotiations.

There was a negotiation meeting held thereafter at which Director of Personnel Eric Perez Bayron was present and at which the per diem nurse information was alluded to. It is Perez' uncontradicted testimony that the relevancy was not discussed by the parties and that other information was asked for and provided. The complaint allegation as to November 14 and March 3, 1990, is limited to the alleged failure to provide the per diem nurse information as to names, social security numbers, work programs, and shifts. He admitted not providing the per diem nurse information and that it was his authority to decide just what information the Hospital provided to the Union. He asserted that he did not provide the per diem nurse information because he did not consider it relevant. He testified that there were no other discussion of per diem nurse information relevancy.

Quinones' recollection as to the circumstances of this late 1990 correspondence was exceptionally poor. He testified that the Union wanted the per diem nurse information regarding wages and differentials because of unit nurses' grievances alleging preferential treatment in assignment of shifts and pay for per diem nurses. He testified that he could not recall its entire production thereafter. Perez testified that some information was subsequently produced in order to facilitate collective bargaining.

By letter of December 11, 1990, the Union announced its intention to institute informational picketing at the Hospital on December 27, 1990, to protest the failure of Respondent to reach agreement on a CBA for either the RN unit or the technicians' unit.

By letter dated January 2, Nunez responded to the union correspondence of November 14 and December 11. He claimed that the Hospital had on April 30, 1990, supplied requested information as to unit employees. With respect to the per diem nurse information, he reiterated a letter sent to the Union by Perez on August 30, 1990, which refused production of that information on grounds of relevancy. He repeated his claim that negotiations were at a ''standstill'' because of the Union's bargaining demand for restitution of pre-1985 fringe benefit levels, but invited the Union to resume negotiations with some flexibility.

2. February 8, 1991 request

The complaint allegation is that the Union requested on February 8, 1991, and the Hospital refused to supply, the financial statements of the Association for 1988, 1989, and 1990, as well as the auditor's recommendation; the copy of the contract, document, or items under which the Hospital provides medical and Hospital services to members of the Association and to the employees of Cooperative de los Maestros; and documentation or data disclosing the monetary contributions of each teacher member of the Association to the Association's health plan and the rates charged by the Hospital to the Association for its services.

By hand-delivered letter dated February 8, 1991, addressed to Perez, Quinones responded to Perez's January 2, 1990 letter by justifying multiple requests for information already provided. Thereafter, he repeated the request for per diem nurse information on the stated grounds that it was necessary for a comparative analysis of salaries and benefits accorded unit members who have complained about discriminatory pay and shift assignment in deference to nonunit per diem nurses who perform unit work in place of more senior unit nurses. The per diem nurse information request was repeated. The letter also requested the information delineated in the complaint, as well as certain other information not alleged to have been unlawfully withheld.

By letter dated February 22, 1991, Perez responded to Quinones. He countered Quinones' claim that the Hospital had been responsible for the lack of negotiations by claiming that the Union's insistence on restoration of pre-1985 fringe benefit levels as a precondition for union bargaining flexibility was the cause of bargaining ''standstill.'' Certain information was promised. Information as to the number of per diem nurses employed, their salaries, and benefits earned was provided. Perez however refused to disclose per diem nurse work schedules as not relevant to ''matters that remained to be bargained in the unit.'' Perez asserted that work programs are posted on the bulletin boards and that if any member felt that seniority rights are violated, a grievance may be filed, but none have been.

Perez' letter purported to enclose the Hospital's 1988, 1989, and 1990 financial statements but refused to supply information concerning the Association as not relevant and some of which are Association records inaccessible to the Hospital. With respect to the Association medical service rate information, Perez refused disclosure for the proffered reason that it was not relevant.

The Hospital's and the Union's negotiators met on February 25, 1991. There is no evidence as to the substance of the meeting except for reference to it in a letter from Perez to Quinones dated March 1, 1991, purportedly conveying certain bargaining unit information promised at that meeting, i.e., up-to-date list of RNs and technicians with seniority, salary, incentive pay, and certain work schedules.

With respect to the per diem nurses, Perez disclosed that 146 were employed at an average of 1400 shifts per month. He also set forth the per diem payment amounts by shifts and stated that they received no fringe benefits. Quinones testified to the receipt of the information relative to per diem nurses which he characterized as 4 months late. The lists of per diem nurses by name were not provided nor were the requested per diem nurse payrolls.

By letter on March 5, 1991, Quinones replied to Perez' February 13 letter and expressed a willingness to negotiate each and every term and condition of employment of unit members. He concluded:

> You accuse us of insisting in not agreeing to the cuts in bonus, vacations, holidays and sick leave. But in case this were true, what reasonable offer has the employer made in order to motivate movement in these items? DO REPLY.

3. The March 13, 1991 request

By letter dated March 13, 1991, Quinones repeated the Union's request and reasons for its request for the names, social security numbers, addresses, and work schedules for per diem nurses. He also repeated his request for information related to the Association and again explained its reasons for the requests, i.e., to bargain intelligently at a negotiation meeting scheduled for March 15, 1991.

With respect to the identity and addresses of per diem nurses, Quinones further explained the need to identify them as members of other area bargaining units represented by the Union and to possibly communicate with them for the purpose of eliciting their support for unit employees' seniority rights and to elicit from them their earnings and benefits to resolve conflicting reports of same which differ from information supplied by the Hospital. Quinones also explained that communication with per diem nurses was necessary for the Union to investigate the validity of the reasons why so many nonunit per diem nurses were being employed in unit work.

With respect to the information relative to the Association, Quinones further expanded on the disclosure of the Respondents' relationship as revealed in the Hospital's audited financial statements. He argued further that a disadvantageous financial relationship between the Respondents have a direct bearing on the Hospital's ability to adequately pay the unit members and therefore the Union, as representative of those members, must have that information to ''negotiate in a sensible fashion.''

The Union forwarded a revised economic offer to the Hospital on March 20, 1991. In the covering letter, Quinones explained why the Union had difficulty in responding to the Hospital's insistence that the Union make a counteroffer, i.e., the Union did not have the requested relevant information. Notwithstanding this contention, Quinones submitted a new counteroffer which he claimed was predicated on prevailing area salary levels. Inter alia, the Union proposed a basic monthly salary of $1000, monthly increases of $130 for each of 3 years, and various other increases for shift differential rates and incentive rates. A vacation sick leave accrual rate was proposed as well as 12 full and 9 half holidays and a Christmas bonus as contained in the 1985 expired CBA. There are no complaint allegations dealing with collective-bargaining negotiations or the lack thereof for the period thereafter until May 1992 except, of course, for the continuing refusal of Respondents to provide certain information claimed necessary for the Union to bargain intelligently with respect to the economic terms of a CBA and to properly represent unit employees. There was continuing correspondence over the Union's continued bargaining position with respect to the demanded restoration of the pre-1985 fringe benefit levels and the Hospital's refusal. Quinones insisted that the Union was flexible and accused the Hospital of refusing to restore the 1985 cuts and refusing to negotiate the restoration demand.

G. *1992 Unilateral Salary Increase—Case 24–CA–6601*

The complaint in Case 24–CA–6601 alleges that the Hospital effectuated a wage increase for unit employees on May 15, 1992, without providing the Union an opportunity to bargain. It is undisputed that a salary increase was effectuated for unit nurses in May 1992. Respondent's brief places the effectuation date as May 16, 1992. Respondent's counsel at trial conceded the effectuation date to have been May 30 retroactive to May 15, as does certain correspondence. Accordingly, the General Counsel correctly places the effectuation date as of May 30, 1992, but retroactive to May 15.

On March 10, 1992, Perez forwarded to Quinones a proposed schedule of salary increases intended to be effective on April 1, 1992. The basic monthly salary, for example was to be increased from between $825 and $860 to $1000 and $1050, depending on the type of academic degree earned by the graduate nurses. Other differential and incentive increases were proposed.

On March 12, Quinones replied to Perez in writing wherein he reiterated recent requests for unit members' payroll at cost for reproduction to be paid by the Union and he also requested the Hospital's ''Financial Statement'' for 1990, 1991, and 1992 and ''any type of economic information in addition to the above which is the basis on the Hospital making this new proposal [sic].''[13] A second written response was also sent by Quinones to Perez on the same date wherein he requested the Hospital to defer implementation of the increases and to bargain with the Union about it. He suggested however that salary increases agreed on could be made effective retroactively on agreement of an entire CBA, for which he argued the 5 days' notice was prohibitive of meaningful negotiation.

By letter dated March 18, 1992, Quinones again responded to the March 10 proposal by asking for information he stated was necessary for an intelligent negotiation of the proposal. He requested information relative to the identification of nurses impacted by the proposed raises, i.e., lists of nurses in each classification. On March 26, Quinones wrote to Nunez complaining about his 5-day inability to contact Nunez to set up a meeting at which Quinones stated there was a ''possibility of reaching an Agreement.''

By letter dated March 27, Perez forwarded to Quinones the information he had requested on March 12 and 18, i.e., registered nurses' payrolls and the 1990–1992 financial statements. He also promised to provide the other listings of

[13] There is no separate complaint allegation with respect to this informational demand or any other in 1992.

nurses requested relative to impact of the raise proposal of a 25-cent-per-page reproduction cost.

On March 27, the parties' negotiators met at the Puerto Rico Department of Labor separately with the mediator, except for a brief meeting together at which the Union offered to make a counterproposal. It did so, but it was rejected. The Hospital made a counterproposal modifying certain provisions regarding specialty and differential rates pursuant to part of the union counterproposal. The Union wanted to negotiate an entire CBA with salary increases retroactive to April 1, 1992, but stated that it could not bargain without the requested information. Nunez' response was to laugh. It was not clear whether the information reference was to information recently requested or to the information requested in the past which had not been produced. The meeting adjourned abruptly at the request of the Hospital.

On April 1, the Hospital confirmed by letter to Quinones the Hospital's counteroffer of March 27 as well as a 3-year term CBA incorporating the proposed salary increases as modified by the March 27 counteroffer, as well as a salary reopener clause 1 year thereafter.

The Union's opposition to the form of raise proposed by the Hospital was that it raised the basic salary rate for newer nurses and special rate nurses but not the salary rate for the higher paid, more senior nurses. On April 3, Quinones communicated with Perez by ''telecopier'' and informed him that he was preparing a counterproposal for which he required ''the necessary information to complete it.'' Quinones promised to pay the costs of reproduction. He explained the need for the Union to ascertain ''what impact'' the Hospital's proposed raise would have on presently employed nurses' salaries which the March 18 requested information would provide. On the same date, Perez responded with a letter purporting to convey the March 18 requested information, copies of other unit's' CBAs as also requested, and a copy of the December 1989, 1990, and 1991 unit payrolls. In cross-examination in rebuttal testimony, Quinones gave inconsistent testimony as to what information he had received at this time and was obviously confused and uncertain. Finally, he admitted that he did not actually recall whether or not he in fact received all that he asked for. The parties stipulated that the 78 pages of payrolls were in fact forwarded and received by the Union. I must credit the more certain testimony of Perez, no longer employed by the Hospital when he testified, that the information purportedly sent with the Hospital's correspondence was in fact sent or provided to the Union. There is no complaint allegation that any newly requested information was unlawfully withheld from the Union during this complaint period of 1992.

On April 8, Nunez and Quinones exchanged electronic communications wherein each accused the other of stalling negotiations. On April 9, Nunez sent a ''fax'' letter to Quinones reciting the purported history of the proposed pay raise and its current status, which he termed a ''standstill.'' He accused the Union of dilatory behavior and stated that the Hospital's last offer on the salary increase would be effectuated on April 15, 1991, but he invited the Union to negotiate and sign a full CBA.

Quinones testified that at this time the Union felt that the Hospital's salary increase offer was a good one but that it now opened the door for a full CBA negotiation and the Union wanted to further discuss the failure to extend the raise to senior nurses and to nurses who had transferred out of the special rates' classification areas. On April 13, Quinones responded to Nunez and challenged his accusations of union delay. He explained the need for time for the Union to evaluate the data provided to it at its request. He asked for opportunity to explain to the Hospital the negative impact of the Hospital proposal on hiring and retention of unit employees and the negative impact on senior unit nurses. Quinones stated that he was willing to discuss a 3-year contract with a reopener clause if the Hospital would provide ''all that economic information which may put the Union in a position'' to accept such proposal. The Union, he said, wanted some explanation as to what economic changes had occurred to enable the Hospital to propose increases in differential rates ''at the same time it refuses to give salary increases that may be projected [sic].'' Finally, he denied the existence of any ''standstill'' in negotiations and pointed out that each side had thus far modified its position since the raise was first proposed. On the same date, Nunez ''faxed'' his response and agreed to defer implementation of the proposed increase and to meet with the Union ''to negotiate for the signing of a collective bargaining agreement.'' Nunez reasserted the Hospital's previously expressed position that if a full CBA were to be negotiated, any raises would be effective as to execution date and not retroactive as proposed by the Union. A joint meeting, as arranged through the mediator, was confirmed for April 21, at the Labor Department at 2 p.m.

The negotiators for both sides met at the Labor Department separately with the mediator. According to the General Counsel's uncontradicted evidence, the Union requested to the mediator that the parties meet jointly but was told by the mediator that the Hospital had refused. The Union was provided with the 1990 and 1991 financial statements requested by the Union. Perez testified that the 1992 audit had not yet been completed, i.e., the fiscal year was yet to end on June 30. The Union was informed that the Hospital adhered to its last March 27 counterproposal. Thus there was no face-to-face negotiation meeting. The Respondent's witness, Perez, failed to testify as to the meeting except to characterize it as a negotiation meeting held separately with the mediator.

Perez, on April 23 by letter to Quinones, reiterated the Hospital's March 27 counteroffer and willingness to effectuate it immediately. On the same date, Quinones wrote to both Velez and Perez complaining about the refusal of the Hospital to meet jointly with the Union on April 21, as well as the 8-year history of their now bitter relationship. He ended by asserting the Union's bargaining ''flexibility.''

On April 9, Quinones wrote to Nunez and challenged the recitation of facts in Nunez' April 9 letter. Quinones however again reiterated the Union's desire to set forth to the Hospital its explanation of the impact of the proposed raise in light of its evaluation of the information requested and received by it. He never explained this position in his testimony.

The negotiators met separately with the mediator at the Labor Department and also with each other jointly on May 8, 1992. No notes were taken. Evidence of what transpired rests on the testimony of Quinones and Perez, both of whom, particularly Quinones, were conclusionary and encapsulated. Quinones was silent as to the meeting in his direct examination and did not refer to it until he was called again as a

rebuttal witness. Eventually all he did was to contradict certain recitations of what had transpired as stated in a letter dated May 11, sent to him by Nunez, i.e., as to how the meeting ended. Quinones claimed that it was mutually agreed on to adjourn. He did not contradict the details of Perez' testimonial account of the meeting except for how the meeting ended.

Because Perez was somewhat more detailed as to what was discussed and because he was not effectively rebutted, I credit him and find that the meeting of May transpired as follows. The meeting was called on the request of the Union. The Hospital negotiators expected union flexibility based on Quinones' recent correspondence. The Union however demanded that all the fringe benefits be restored to pre-1985 impasse levels as a condition precedent to collective bargaining. Furthermore, the Union demanded to renegotiate noneconomic items that had previously been agreed on because of a lapse of years since prior agreement. During the preceding years of negotiation, the Union had demanded that noneconomics be agreed on first, then it shifted its position to negotiate economic matters. Now, on May 8, 1992, the Union demanded to renegotiate agreed-on noneconomic matters as part of a resumed contractual negotiation opened by the Hospital's proposed salary increase. The Union insisted on characterizing the meeting as informal. The Hospital requested the mediator to call a formal negotiation meeting. The meeting was thereupon terminated when the Union walked out. The Hospital negotiators asked the mediator to set up a new meeting, but none was arranged.

On May 11, 1985, Nunez wrote to Quinones as noted above. Except for a different version of how the meeting ended and his accusation that the Hospital wanted only to negotiate differential raises, he did not otherwise contradict Nunez' version of the meeting or of the positions of the parties, nor did Quinones contradict Nunez with answering correspondence. In his rebuttal testimony, Quinones admitted that at the May 8 meeting, the Union demanded that before it could agree on anything, it would be necessary to re-negotiate all noneconomic areas. He gave no further explanation than that it was necessary because of the lapse of time.

In his May 11, 1992 letter, Nunez concluded that there were ''abysmal and unsalvageable differences'' in their respective positions regarding economic issues, now aggravated by a demand to reopen noneconomic agreements. Accordingly, he gave notice that the subsequently modified salary raise of March 10 would be effectuated as of May 16, 1992, unless the Union accepted at a date prior to May 15, 1992, the Hospital's last salary raise offer inclusive of a 3-year CBA with a first anniversary salary reopener.

Nunez reiterated the Hospital position that its economic position prevented consideration of other increases as clearly evidenced by audited financial statements. The Union did not respond, and the last salary raise offer by the Hospital was effectuated on May 30 retroactive to May 16. The Union, by letter of June 1, 1992, to Perez, announced an intended informational picketing at the Hospital on June 24 to protest the refusal ''of the employer'' to provide requested information to protest the delay in negotiations and to protest ''unilateral changes in work conditions.''

On June 4, 1992, Nunez wrote to Quinones wherein he addressed himself to a May 26, 1992 faxed letter requesting ''various information.'' He informed him of the reproduction costs of items 1, 2, and 3, which would be provided, but asked to know the relevance of items 4 and 5. The record does not contain the May 26 request letter nor is there testimony about it, nor is there any evidence that it related to any offer to reopen negotiations on the proposed salary increase.

During the period between the November 1992 and 1993 summer trial sessions, the parties resumed negotiations and quickly agreed on the noneconomic CBA provisions. Agreement on economic terms and retroactive fringe benefits restoration failed.

H. *Analysis of Single-Joint Employer Issue*

Inasmuch as the Union's claimed inability to bargain intelligently as to salary raises and/or full CBA was allegedly frustrated by an unlawful refusal to produce information as to the Respondents' relationship on the grounds of lack of any relationship, it becomes necessary at this point to evaluate the relationship issue.

The Board set forth a concise statement of the law with respect to alter ego or single employer status as follows in *Airport Bus Service*, 273 NLRB 561 (1985):

> It is well established that in determining whether two or more nominally separate businesses operating simultaneously are sufficiently interrelated so that they may be treated as a single integrated business enterprise, the Board looks to four principal factors: common management, centralized control of labor relations, interrelations of operations, and common ownership or financial control. No single criterion is controlling, although the first three factors, which reveal the degree of operational integration, are more critical than common ownership. *Radio Union v. Broadcast Service*, 380 U.S. 225 (1965); *Bryar Construction Co.*, 240 NLRB 102, 104 (1979). Similarly, in making the related, but nevertheless distinct, determination of whether a business is the alter ego or ''disguised continuance'' of its predecessor, the Board will find alter ego status where the record demonstrates ''substantial identical'' management, business purpose, operation, equipment, supervision, customers, and ownership between the two businesses. *Howard Johnson Co. v. Hotel & Restaurant Employees*, 417 U.S. 249, 259 fn. 5 (1974); *Crawford Door Sales Co.*, 226 NLRB 114 (1976).

In *Alabama Metal Products*, 280 NLRB 1090 fn. 1 (1986), the Board, however, characterized the factor of centralized control of labor relations as ''critical'' to a finding of single employer status. In *Image Convention Services*, 288 NLRB 1036 (1988), despite common ownership, single employer status was not found between unrelated businesses where there existed no common control of labor relations, no interrelation of operations, and no common management. Single employer status however may be disclosed by any analysis of ''all the circumstances of the case'' and where there is an absence of an ''arm's-length relationship found among unintegrated companies.'' *Operating Engineers Local 627 v. NLRB*, 518 F.2d 1040, 1045–1046 (1975), affd. in pertinent part sub nom. *South Prairie Construction Co. v. Operating Engineers Local 627*, 425 U.S. 800 (1976).

An apt recitation of law concerning joint employer status was stated by the court in *NLRB v. Browning-Ferris Indus-*

tries of Pennsylvania, 691 F.2d 1117, 1122–1123 (3d Cir. 1982), as follows:

> In contrast [to alter ego or single employer status], the ''joint employer'' concept does not depend upon the existence of a single integrated enterprise . . . . Rather, a finding that the companies are ''joint employers'' assumes in the first instance that companies are ''what they appear to be''—independent legal entities that have merely ''historically chosen to handle jointly . . . important aspects of their employer-employee relationship.'' *NLRB v. Checker Cab Co.*, 367 F.2d 692, 698 (6th Cir. 1966).
>
> In ''joint employer'' situations, no finding of a lack of arm's-length transaction or unity of control or ownership is required, as in ''single employer'' cases. As this Circuit has maintained since 1942, ''[i]t is rather a matter of determining which of two, or whether both, respondents control, in the capacity of employer, the labor relations of a given group of workers.'' *NLRB v. Condenser Corp. of America*, 128 F.2d at 72 (citations omitted). The basis of the finding is simply that one employer while contracting in good faith with an otherwise independent company, has retained for itself sufficient control of the terms and conditions of employment of the employees who are employed by the other employer. *Walter B. Cooke* [262 NLRB 626, 640–641 (1982)]. Thus, the ''joint employer'' concept recognizes that the business entities involved are in fact separate but that they *share* or co-determine those matters governing the essential terms and conditions of employment. *C.R. Adams Trucking, Inc.*, 262 NLRB [563, 566] (1982); *Ref-Chem Co. v. NLRB*, 418 F.2d 127, 129 (5th Cir. 1969); *NLRB v. Greyhound Corp.*, 368 F.2d 778, 789 (5th Cir. 1966).

See also the Board's discussion of the joint employer status and the joint employer's liability in *Capitol EMI Music*, 311 NLRB 997 (1993).

In the instant case, the two Respondents possess separate and distinct corporate forms, organizational structure, business objectives, functions, day-to-day operational management, physical plants, and day-to-day labor relations management. The General Counsel's case for single or joint employer status rests on the interrelationship of upper corporate management, the ultimate control of the Hospital's collective-bargaining objectives and positions by the Association, and the lack of arm's-length relationship in a symbiotic relationship whereunder the financial status of the Hospital is at the mercy of and subservient to the Association for the benefit of Association members.

Respondent Hospital argues the similarity of the facts here to those found by the Board to preclude either single or joint employer status in *Wisconsin Education Assn.*, 292 NLRB 702 (1989). That case involved resolution of a question concerning representation of employees of two distinct but interdependent entities, a school teacher association and administrative units which shared common objectives and mutual assistance. Like here, there was an absence of common ownership by virtue of the nature of the association and the units. Like here, there were many aspects of a mutually advantageous and cooperative symbiotic relationship between two separate and distinct corporate structures. Like here, there was no common daily determination and administration of labor relations. The Board found no substantial interrelation of operations, but rather separate and distinct levels of operations with different roles and functions and a ''marked degree of independence of action.'' Each of those teacher entities independently determined its own budgets without interference from the other. With respect to alleged common management relied on by the Regional Director for a contrary conclusion, the Board found that a certain degree of common identity of some board of directors was insufficient. There, the Board found that no one director of either board had the voting power to ''individually determine the outcome decisions on either board.'' The Board noted, however, evidence of actual independence of operations of each in concluding that there was no shared management. The Board further found autonomy of labor relations and nonmutual interference. The Board noted that the administrative units had separate financial sources and separate budget considerations which caused their employees' wages, fringe benefits, and other terms and conditions of employment to vary not only from one administrative unit to another unit, but also to vary from that determined in the employment contract negotiated between the association and its employees individually. The Board finally noted that joint employers ''are separate entities who share in the control of the employee's worklife.'' It found that in the facts before it, ''there is simply no room for codetermination'' of any terms and conditions of employment by the two entities. *Wisconsin Education Assn.*, supra at 715.

The facts of this case are distinguishable with respect to the factors of common management, labor relations determination, independence of financial resource, independence of budget establishment, and lack of arm's-length relationship.

The facts here readily establish that, as admitted, the Hospital is the creature of the Association. It is viewed as such by its common corporate head executive, who with common officers and majority directors establish and determine all financial arrangements of the Hospital directly through the finance and planning committee. Delvalle testified that the committee closely supervised the Hospital's economic development during times of ongoing deficits. Those financial decisions necessarily must have included decisions as to contracts for services to the Association, Medicare, Triple S, and all other health care insurers, whereby the Association reaps an extraordinary benefit. The budget of the Hospital, therefore, must accommodate the advantageous relationship enjoyed by the Association. The Hospital's very survival depends on the assumption of its debts by the Association. Clearly, the Hospital must operate within the financial restraints imposed on it by the Association, the interest of which is served by the common upper corporate management. No clearer evidence of this can be had then Velez' public statements regarding the subservience of the Hospital, i.e., its very own property, to the financial benefit of the Association's members.

Those financial constraints imposed on the Hospital by virtue of its relationship with the Association necessarily affected its bargaining posture, i.e., precisely what it is either willing or able to negotiate with respect to labor costs. The financial arrangement between Respondents alone establishes

a codetermination of working conditions to sufficiently establish a joint employer relationship. The facts however prove an even stronger common control of labor relations beyond the day-to-day decisions as to hiring, firing, promotions, etc. The very basic constitution of employment conditions—the collective-bargaining agreement—is preeminently more significant than daily labor relations decisions. The facts disclose that a commonly controlled Hospital board of directors, under the dual leadership of Velez, determines, reviews, and approves of ultimate collective-bargaining objectives, positions, and bargaining strategies all within the Hospital's economic framework as determined by its directors, i.e., Velez and the dual Association-Hospital majority directors. Indeed, from Pou's own testimony, he could not recall having met with Velez or the board, whereas the chief negotiator, Aldarondo, consulted with Velez. Generally, the bargaining directions and instructions were conveyed to the negotiators from the directors through the Hospital administrators whom the Board consulted.

I am in agreement with the General Counsel's characterization of the Hospital as essentially a division of the Association, set up and funded by it to provide low cost health and Hospital services to its members. I conclude that because of the integration of high corporate management, officers, and directors, the common management of all financial decisions and all economic planning decisions, the lack of financial and labor relations autonomy of the Hospital and its subservience to the financial interests of the Association, the codetermination of basic terms and conditions of employment by common chief corporate executive, officers, and directors, and the clear absence of an arms'-length relationship, that Respondents constitute a single employer for the purpose of this litigation, as alleged in the complaint.

I. *Analysis of Information Requests Issues*

A failure to furnish the employees' designated bargaining agent with requested information which is relevant to the negotiation or administration of a collective-bargaining agreement or use in carrying out its statutory duties and responsibilities may constitute a breach of an employer's good-faith bargaining obligations under the Act. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956). Information concerning terms and conditions of employment within the bargaining unit is presumptively relevant and no specific showing of relevance is required, but as to areas outside the unit a more restrictive standard of relevance is applied. *Ohio Power Co.*, 216 NLRB 987, 991 (1975); *Connecticut Light & Power Co.*, 339 NLRB 1032 (1977).

In *Associated General Contractors of California*, 242 NLRB 891 (1979), enfd. 633 F.2d 766 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981), the Board considered the issue of whether a union was entitled to receive from a multiemployer bargaining association a list of ''open shop'' members. The Board concluded that the union's principal purpose in seeking the data was to ''facilitate inquiry'' into whether or not some of the employer association's open-shop members were bound by the collective-bargaining agreements and included in the represented units. The Board stated at 894:

> [The Unions] are entitled to the requested information under the ''discovery-type'' standard enumerated in *N.L.R.B. v. Acme Industrial Co.*, 385 U.S. at 437, to judge for themselves whether to press their claims in the contractual grievance procedures, or before the Board or courts, or through remedial provisions in the contracts under negotiation. The *Torrington Company v. N.L.R.B.*, 545 F.2d 840 (2nd Cir., 1976). It is certainly well within the statutory responsibilities of the Unions to scrutinize closely all facets relating to the diversion or preservation of bargaining unit work and, therefore, they are fully warranted in any reasonable probing of data concerning the exclusion of the employees of certain AGCG members from the bargaining units.[10]

[10] *N.L.R.B. v. Rockwell-Standard Corporation, Transmission and Axle Division, Forge Division*, 410 F.2d 953, 957 (6th Cir. 1969); *Curtiss-Wright Corporation v. N.L.R.B.*, 347 F.2d 61 (3d Cir., 1965).

See also *Doubarn Sheet Metal*, 243 NLRB 821 (1979); and *Leonard B. Hebert*, 259 NLRB 881 (1981), enfd. 696 F.2d 1120 (5th Cir. 1983), cert. denied 464 U.S. 817 (1983) (regarding ''double-breasted'' operation); *Leland Stanford Jr. University*, 262 NLRB 136 (1962), enfd. 715 F.2d 473 (9th Cir. 1983) (concerning nonunit employee information necessary for contract negotiation); *Consolidated Coal Co.*, 307 NLRB 69 (1992) (regarding requested information concerning single, joint employer, or alter ego relationship and its relevance to contract violation); *Congreso de Uniones Industriales v. NLRB*, 966 F.2d 36 (1st Cir. 1992), vacating and remanding *Rice Growers Assn.*, 303 NLRB 980 (1991) (regarding requested information in the possession of the parent corporation concerning transfer of work to a third party in a severance pay dispute).

The Board has continued to apply broad discovery principles to requests for information that are either potentially relevant or useful to a union in its performance of its representation duties. *Pfizer, Inc.*, 268 NLRB 916 (1984). The Board has done so where grievances are filed during the life of the contract with respect to contractual language restricting subcontracting and where the information related to work covered by the contract. *Eazor Express*, 271 NLRB 495 (1984).

In *W-L Molding Co.*, 272 NLRB 1239 (1984), with respect to the application of a broad ''discovery type standard,'' the Board quoted with approval the following precedent:

> ''[I]t is not the Board's function in this type case to pass on the merits of the Union's claim that Respondent breached the collective bargaining agreement . . . or committed an unfair labor practice.'' *NLRB v. Rockwell-Standard Corp.*, 410 F.2d at 957. ''Thus, the union need not demonstrate actual instances of contractual violations before the employer must supply information.'' *Boyers Construction Co.*, 267 NLRB 227, 229 (1983). ''Nor must the bargaining agent show that the information which triggered its request is accurate, nonhearsay, or event ultimately reliable.'' Ibid. ''The Board's only function in such situation is in 'acting upon the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities.''' *NLRB v. Rockwell-Standard Corp.*, 410 F.2d at 957

quoting *NLRB v. Acme Industrial Co.*, 385 U.S. at 437. Accord: *General Motors v. NLRB*, 700 F.2d at 1088.

With respect to the impact on ''probable relevance'' of the employer's defenses, the Board stated in *Pfizer*, supra, at 918, as follows:

> Moreover, information of ''probable relevance'' is not rendered irrelevant by a party's claims that it will neither raise a certain defense nor make certain factual contentions. *Conrock Co.*, 263 NLRB at 1294; *Transport of New Jersey*, 233 NLRB 694 (1977). This is so because ''a union has the right and the responsibility to frame the issues and advance whatever contentions it believes may lead to the successful resolution of a grievance.'' *Conrock*, supra, at 1294. And since the Board, in passing on an information request, is not concerned with the merits of the grievance, it is also not ''willing to speculate regarding what defense or defenses an employer will raise in an arbitration proceeding.'' *Conrock*, supra, at 1294.

As to information requested that does not pertain to the bargaining unit matters, the union must demonstrate something more than ''suspicion or surmise'' or a ''mere concoction of some general theory'' of potential usefulness in determining if a contract is being violated. *Southern Nevada Home Builders Assn.*, 274 NLRB 350 (1985); *Sheraton Hartford Hotel*, 289 NLRB 463 (1988).

Where the information requested runs to a possible single-joint employer relationship, the union must establish the relevancy of the information but is not obliged to prove the existence of such relationship, but rather it is sufficient ''that the General Counsel has established that the Union had an objective factual basis for believing'' such relationship existed. *Consolidation Coal Co.*, supra at 72, citing *Bohemia, Inc.*, 272 NLRB 1128 (1984), and *Maben Energy Corp.*, 295 NLRB 149 (1989). See also *Knappton Maritime Corp.*, 292 NLRB 236 (1988). *M. Scher & Sons*, 286 NLRB 688 (1987); and *Walter N. Yoder & Sons v. NLRB*, 754 F.2d 531, 536 (4th Cir. 1985), enfg. 270 NLRB 652 (1984).

On the foregoing premise of a reasonable belief of the single-joint employer relationship and its relevance to negotiations or other representational need, the employer must make a reasonable effort to produce the requested information or to secure it if not available or to explain the reasons for its unavailability. *Rochester Acoustical Corp.*, 298 NLRB 558, 563 (1990); *Congreso de Uniones Industriales*, supra, and cases discussed there. Furthermore, the employer must comply with such requests in a timely fashion. *Consolidation Coal Co.*, supra, citing *EPE, Inc.*, 284 NLRB 191 (1987); *Assn. of D.C. Liquor Wholesalers*, 300 NLRB 224 (1990).

On remand of *Congreso de Uniones Industriales*, supra, the Board reconsidered its original dismissal and concluded that the union there did not adequately state to the employer the relevancy of material requested and dismissed on that ground. *Rice Growers Assn.*, 312 NLRB 837 (1993). The Board stated however that the employer's refusal to make reasonable efforts to seek the requested information from others with which it had a business relationship would have breached its bargaining obligation under the Act, had the information been relevant. See also *Arch of West Virginia*, 304 NLRB 1089 (1991).

The foregoing factual findings fail to disclose a failure or refusal to furnish the Union with requested information prior to the May–June 1985 impasse. Even before that impasse however, the Union had made clear that when it came time to discuss economics, its position would be adamant because of its perception that the Hospital's impoverishment was artificial and that it disguised a potentially more profitable real life economic soundness because of its relationship with the apparently more affluent Association. That position was reiterated throughout the subsequent history of negotiations and was particularly forcefully explicated after Union Analyst Tirado became involved and the disclosure of the auditor's notes regarding third-party relations between Respondents.

Respondent Hospital, by its counsel at trial, stated that Respondents' defenses would be to prove the actual impoverishment of the Hospital and the deficit-ridden economic condition of the Association. As to the latter position, however, there was no attempt during any stage of the negotiations by Hospital negotiators to disabuse the Union of its belief in the affluence of the Association. The Hospital negotiators did not even deny Quinones' allegations of the exploitive nature of the relationship, but rather limited their proffers of proof only as to the financial statements of the Hospital's operations. While remaining silent and nonresponsive to the Union's continuing accusations of Respondent interrelationship during negotiations up to 1987, the Hospital continued to assert financial distress. At no time did the Hospital modify that position to concede that given the Association's resources, it might be able to meet the Union's demands. Within such context, I do not find Respondents' position here to have effectively not pleaded poverty with respect to the Association and thus be excused from an informational obligation under the rationale of *Neilson Lithographing Co.*, 305 NLRB 697 (1991), petition for review denied sub nom. *GCIU Local 505 v. NLRB*, 977 F.2d 1168 (7th Cir. 1992). In any event, at trial, Respondents claimed mutual impoverishment.

Although the facts do not fully support all allegations of noncompliance with informational requests in Case 24–CA–5275, there is clear evidence that by early 1986, after the Union had agreed to negotiate economic issues and had asked for information relating to proof of Hospital poverty, and when the Hospital's claims were finally being put to the test, the Hospital inexplicably delayed supplying requested financial audits to the Union until spring of 1986 and further delayed requested meetings with its comptroller, Gonzalez, whom it had so freely produced at times when the Union refused to discuss economic issues. When the Hospital did provide those audit reports, it initially excised the auditor's integral explanatory notes which significantly tended to corroborate the Union's accusations regarding the Respondents' relationship. By this conduct, I conclude Respondents had no justification and breached their obligation not only to move forward with complete proof of poverty, but their obligation to timely respond to requests for relevant information needed by the Union to make intelligent bargaining demands. By withholding proof of poverty, Respondents had every reason to expect rigid union adherence to its bargaining demands and thus further impasse on which it would make unilateral changes at times it wanted regarding areas where it was advantageous for it to do so.

By summer of 1986, we get into the informational allegations of Case 24–CA–5426 and further more egregious breach of the Hospital's informational request obligations. Quinones had made a new union economic offer but insisted on fringe benefit cuts restoration. In reaction to the Hospital's rejection of that proposal and position, the Union, by its letter of June 10, denied impasse. Reacting to the claim of exacerbated Hospital losses, the Union made specific demands for information, all of which was relevant to the impoverishment claim or which directly involved the bargaining unit and the Union's ability to investigate matters clearly related to its representational duties. The Hospital delayed until September 17, when it finally, partially responded. That delay was never explained.

Although Gonzalez was produced at a later June meeting to provide explanations to the poorly equipped union negotiators, there still had been no meeting with Tirado who would have been able to more intelligently question the comptroller. The Hospital proffered no explanation for the failure to provide for this informational opportunity for so long a period of time. The June meeting was aborted because the Union insisted on a Tirado-Gonzalez meeting and also compliance with the as yet unsatisfied, pending informational requests.

At the August 11 Tirado-Gonzalez meeting, Tirado requested and was promised certain information which Vega and Gonzalez promised to provide, inclusive of the information concerning the Respondents' relationship. There was no challenge to its relevancy. Indeed, there was substantial discussion among Tirado, Gonzalez, and Vega relating to the Union's perceived Association relationship and its causal effects on the Hospital's financial ability to bear labor costs. Tirado explained the relevancy of the information, and he was in no way challenged by Gonzalez or Vega. Gonzalez confirmed that the Hospital was financially ''in solid'' with the Association and that the Association clinic received free rent because the Hospital was owned by the Association. Tirado attributed the Hospital's economic plight to an apparently disadvantageous financial relationship with the Association. Gonzalez raised other factors, but Tirado insisted on more information as to the Respondents' relationship which was promised to be provided. He was even promised total employee payroll breakdown for all employees, which was also unchallenged and promised as were, inter alia, service contracts with the three major insurers. Thus the Hospital representatives by acquiescence conceded to the Union the relevancy of information requested as well as the relevancy of the Respondents' relationship to the Hospital's ability to bear labor costs. Tirado was never provided with that promised information.

On August 29, the Union, by letter, reiterated its request for financial information as well as unit information, all employee payrolls, and per diem nurses information and complained of noncompliance with outstanding informational requests.

Pou's tardy September 17 response to informational requests pending since June addressed itself to the August 29 request and did not satisfy all the information requests pertaining to nonunit employees, inclusive of the per diem nurses. Full audit reports were now initially provided for 1985. Thereafter, the preliminary audit or Medicare report promised to Tirado by September 20 was postponed by Pou to October 15. Pou still failed to challenge the relevancy of information requested on August 11 by Tirado. That information was as yet not forthcoming as of the Union's letter request of October 22, which in part reiterated the request. Some unit information was given in September and some other in November. The delays were never explained. Some information was admittedly withheld by Respondent on grounds subsequently raised as to relevancy, e.g., payrolls of nonunit employees, including per diem nurses, and other information as to nonunit employees.

On February 19, 1987, the Union requested information directly from the Association concerning certain aspects of its relationship with the Hospital. This was denied on the false grounds of lack of any relation between Respondents. When the Union repeated its request of February 19 to the Hospital, relevancy was questioned for the first time of information requested back in August and promised to the Union. By letter of June 1, 1987, the Union fully explained the relevancy and referred, in part, to the auditor's notes. The Union's explanation of its need to know the financial details of Respondent's relationship was full and adequate, but unnecessary because of the Union's longstanding explication of its perception of that relationship and its obvious relevancy to the Hospital's ability to sustain labor costs. The Union's request was never satisfied nor was there any effort made by Respondents to explain their relationship, nor to meet the Union's longstanding accusation that their relationship directly affected the Hospital labor costs capacity.

With respect to the complaint in Case 24–CA–6292, the November through March 1990 refusals to provide information requested, as to per diem nurses, are admitted on grounds of alleged nonrelevancy. The Union had, however, previously and thereafter explained its concern about the erosion of bargaining unit work and their need to investigate complaints of unit members as to this erosion, as well as favoritism in terms of employment to the nonunit nurses. The Union had also explained the need for comparative studies of nonunit employees in relation to its own economic collective-bargaining evaluations. What information that was later provided was incomplete and thereby inhibited the Union's ability to investigate the per diem nurse employment situation, a function clearly relevant to its representational duties. As the facts disclose, the employment rate of nonunit per diem nurses rose dramatically throughout the entire period of the parties' labor disputes. Information as to the Association was admittedly refused again on grounds of relevancy despite the Union's frequent reiteration of its need to evaluate the Respondents' financial relationship in order to make intelligent bargaining decisions. Without further evidence, on the basis of what the Union observed and discovered of that relationship, the Union was not in a position to accept the Hospital's claims of impoverishment, nor was it able to moderate its economic demands. The information was clearly relevant to the Union's ability to formulate intelligent bargaining positions, and its deprivation directly contributed to the Union's bargaining posture. The Union had observed the Association's use of Hospital space and later learned of its rent-free use. It observed use of Hospital employees in that clinic. It had accurately learned to some extent through its own sources that the Hospital charged the Association service rates to the disadvantage of the Hospital. When it finally was provided with full auditors' reports, it learned that the Asso-

ciation was the guarantor of the Hospital's debts. It knew of the interlocking directorate and the dual leadership of Velez. Clearly, those were more than adequate reasons for it to believe that the Respondents' relationship was not one of arm's length and that the Hospital might not be as financially desperate given the existence of that relationship. I conclude that the Respondents were obliged by the Act to satisfy the Union's request for full disclosure of that relationship as well as full disclosure of the circumstances and identity and addresses of per diem nurses, and other payroll information requested and withheld. I find that Respondents' failure to meet that obligation directly contributed to the impasse from 1986 to the date of trial, which it so adamantly claimed had existed, and thereby violated Section 8(a)(1) and (5) of the Act. I further find that its unjustified and unexplained failure to timely produce other relevant information also violated Section 8(a)(1) and (5) of the Act from late 1985 and thereafter.

J. *Analysis of Unilateral Salary Increases*

Both unilateral salary increases of 1986 and 1992 were effectuated in the context of unlawful deprivation of information necessary for the Union to bargain about economics. Both occurred in the context of an attempted resumption of negotiations for a full CBA. Thus, in order for the Union to moderate its position, it needed to know whether the Hospital was in real financial distress unrelievable by the Association's resources, or whether the Respondents were motivated by economic greed rather than compelling economic necessity for both entities. That information was withheld in bad faith by Respondents, found here a single employer.

The August 1, 1986 unilateral salary increase was particularly precipitous because it was made during the very period preceding the long sought, but delayed, meeting between the union financial analyst and the Hospital comptroller, for which Quinones had already argued its necessity for intelligent bargaining. Thus, having agreed to negotiate the salary increase and having expressed a desire to reopen full CBA negotiation, the Hospital instituted the proposed salary increase without having provided the Union with adequate opportunity to bargain about the nature and extent of either the salary increase or the economic terms of a full CBA. *Circuit-Wise, Inc.*, 306 NLRB 766, 768–769 (1992).

Similarly, in March 1992, the Hospital reopened economic negotiations with its salary raise proposal. Proposals were exchanged. The Union expressly wanted to negotiate further the extent of the raise and other economic terms of a CBA. Quinones accurately recognized that the Hospital now ''opened the door'' to negotiations for a full CBA.[14] Updated financial information for the Hospital was produced, but none as to the Association despite the long pending demand for it and its explained necessity for the Union's intelligent evaluation of Respondent's full financial position. Without full disclosure, the Union clung to its persistent suspicion of Association affluence and artificial Hospital impoverishment, and thus resulted what Nunez referred to as ''abysmal and unsalvageable differences.'' The stalemate, I conclude however, was directly attributable to Respondents' unlawful nondisclosure of requested information.

Thus I conclude that neither on August 1, 1986, nor on May 15–30, 1992, did either a valid good-faith impasse exist as to the proposed salary increases, nor was adequate full opportunity given for an intelligently informed union to bargain about it.

I conclude that Respondents, by their unlawful withholding of relevant bargaining information, now became the party that failed to put to test the alleged bad-faith adamancy of the other party. It may well be that had the Respondents made full disclosure of the Association's deficits, that the Union would nevertheless have remained unmoved and may well have demanded unacceptable business decisions to be made by Respondents which would have led to good-faith impasse. But like 1985 in reverse, it was now Respondents who failed to put the Union to the test.

Accordingly, I find that the Hospital's unilateral implementation of salary increases in August 1986 and May 1992 breached its good-faith bargaining obligations and violated Section 8(a)(1) and (5) as alleged in the complaints.

CONCLUSIONS OF LAW

1. Respondent Hospital and Respondent Association constitute a single employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is, and has been for more than 20 years, the exclusive collective-bargaining representative by virtue of Section 9(b) of the Act for purposes of rates of pay, wages, hours of employment, and other terms and conditions of employment for employees in the following appropriate unit:

> All male and female graduate nurses employed by Asociacion Hospital del Maestro, Inc. at its hospital facilities located at Domenech Street, Hato Rey, Puerto Rico, or at any other dependency of said hospital in, or outside of, Hato Rey, Puerto Rico, including those at existing locations or future planned locations, but excluding all other employees of the hospital and executives, administrators, and supervisors as defined by Section 2(11) of the Act.

4. The Respondents have failed and refused to bargain in good faith with the Union in March 1986 and May 1992 by unilaterally granting wage increases to unit employees without having provided the Union with adequate bargaining opportunities, and by failing and refusing to furnish or by dilatorily furnishing certain information requested by the Union as described in the above decision which was and is necessary and relevant to the Union's performance of its function as the exclusive bargaining agent of the unit employees in violation of Section 8(a)(1) and (5) of the Act.

5. All other allegations of the consolidated complaint are without merit.

THE REMEDY

Having found that Respondents violated Section 8(a)(1) and (5) of the Act as alleged in certain paragraphs of the complaint and concluding that those violations, although

[14] With respect to the dissolution of impasse by change of position, circumstance, or even passage of time, see *Webb Furniture Corp.*, 152 NLRB 1526 (1965); *Hi-Way Billboards*, 206 NLRB 22 (1973); *Charles D. Bonanno Linen Service v. NLRB*, 454 U.S. 404, 412 (1982); *Circuit-Wise, Inc.*, 309 NLRB 905, 919–921 (1992).

rooted in the past, have persisted and affect the parties' present relationship, I recommend that they be ordered to cease and desist from their unlawful conduct and take certain affirmative action to effectuate the policies of the Act.

Specifically, I recommend that Respondent Hospital be ordered to bargain in good faith with the Union, if the Union so requests, about the salary increases to unit employees in August 1986 and May 1992 and, if requested by the Union, rescind those increases.

I also recommend that Respondents be ordered to provide to the Union the information set forth in the recommended Order here.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondent, Hospital del Maestro, Inc., and/or Asociacion de Maestros de Puerto Rico, a single employer, Hato Rey, Puerto Rico, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Unidad Laboral de Enfermas(os) y Empleados de la Salud as the designated exclusive bargaining agent in the appropriate collective-bargaining unit by unilaterally granting salary increases to unit employees without giving adequate bargaining opportunity. The collective-bargaining unit is:

> All male and female graduate nurses employed by Asociacion Hospital del Maestro, Inc. at its hospital facilities located at Domenech Street, Hato Rey, Puerto Rico, or at any other dependency of said hospital in, or outside of, Hato Rey, Puerto Rico, including those at existing locations or future planned locations, but excluding all other employees of the Hospital and executives, administrators, and supervisors as defined by Section 2(11) of the Act.

(b) Failing and refusing to bargain in good faith with the above Union by failing and refusing to furnish or dilatorily furnishing information which was and is necessary and relevant to the Union's performance of its function as the exclusive bargaining agent of unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) If so requested by the Union, rescind the salary increases to unit employees of August 1986 and May 1992 and, on request by the Union, bargain in good faith about salary increases, hours of employment, and any other term and condition of employment and, if agreement is reached, reduce that agreement to writing and sign it.

(b) To the extent that it has not already done so, either directly or indirectly as a result of the unfair labor practice proceeding, furnish to the Union information requested by the Union orally and in writing on November 1, 8, 20, and 27, 1985; January 8, 23, and 24, June 10, August 11 and 29, and October 22, 1986; November 14, 1990; and February 8 and March 31, 1991, including but not limited to payrolls for all unit and nonunit employees, payrolls, names, dates of hire, social security numbers, and addresses of per diem nurses and information relating to the functional and financial relationship between Asociacion Hospital del Maestro, Inc. and Asociacion de Maestros de Puerto Rico, as well as the financial and contractual dealings between them, and information as to the financial status of each of them.

(c) Post at their Hospital facility in Hato Rey, Puerto Rico, English and Spanish language translated copies of the attached notice marked ''Appendix.''[16] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with Unidad Laboral de Enfermas(os) y Empleados de la Salud as the designated exclusive bargaining agent in the appropriate collective-bargaining unit by unilaterally granting salary increases to unit employees without giving adequate bargaining opportunity. The collective-bargaining unit is:

> All male and female graduate nurses employed by Asociacion Hospital del Maestro, Inc. at its Hospital facilities located at Domenech Street, Hato Rey, Puerto Rico, or at any other dependency of said hospital in, or outside of, Hato Rey, Puerto Rico, including those at existing locations or future planned locations, but excluding all other employees of the hospital and executives, administrators, and supervisors as defined by Section 2(11) of the Act.

WE WILL NOT fail and refuse to bargain in good faith with the above Union by failing and refusing to furnish or dilatorily furnishing information which was and is necessary and

relevant to the Union's performance of its function as the exclusive bargaining agent of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, if so requested by the Union, rescind the salary increases to unit employees of August 1986 and May 1992 and, on request by the Union, bargain in good faith about salary increases, hours of employment, and any other term and condition of employment and, if agreement is reached, reduce that agreement to writing and sign it.

WE WILL, to the extent that we have not already done so, either directly or indirectly as a result of the unfair labor practice proceeding, furnish to the Union information requested by the Union orally and in writing on November 1, 8, 20, and 27, 1985; January 8, 23, and 24, June 10, August 11 and 29, and October 22, 1986; November 14, 1990; and February 8 and March 31, 1991, including but not limited to payrolls for all unit and nonunit employees, payrolls, names, dates of hire, social security numbers, and addresses of per diem nurses and information relating to the functional and financial relationship between Asociacion Hospital del Maestro, Inc. and Asociacion de Maestros de Puerto Rico, as well as the financial and contractual dealings between them, and information as to the financial status of each of them.

ASOCIACION HOSPITAL DEL MAESTRO, INC. AND/OR ASOCIACION DE MAESTROS DE PUERTO RICO